85-1396

Supreme Court, U.S.
FILED
FEB 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Kenneth L. Childs
David T. Duff

Post Office Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Counsel for Petitioner,
William B. Royster

February 19, 1986

QUESTIONS PRESENTED

1. Do 42 U.S.C. § 1983 and the Due Process Clause permit an entity of the State to injure the reputation of its employee, and cause other serious damages, by publicly discharging him in violation of his contract and his hearing right, and then avoid a damage claim by paying the employee the salary under the contract?

2. When state law gives a government employee, in addition to the right to a specified salary, the right to remain in his job without a material change in duties, may a federal court refuse to protect from deprivation without a hearing anything more than the right to receive salary?

PARTIES

The Appellee in the proceeding in the Court of Appeals was William B. Royster. The Appellants in the Court of Appeals were the Board of Trustees of Anderson County School District No. 5, Tony Turner, Joe O. Bolt, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board and as individuals. (Defendants Ann W. Huitt, Brenda H. Goelz, Cynthia W. Williford, and Carol H. Floyd were dismissed as parties before trial by order of the District Court dated March 16, 1984. The Anderson County School District No. 5 was dropped as a named defendant at the end of the trial. The caption of the case in the Court of Appeals was never corrected to reflect these changes.)

TABLE OF CONTENTS

Page

Questions Presented i

Parties ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdictional Statement 2

Constitutional and Statutory Provisions Involved 2

Statement of the Case 3

Reasons for Granting the Writ

I. The Fourth Circuit's Decision Negates the "Compensation Principle" of *Carey v. Piphus;* the Court Nullifies *Carey* by Ignoring its Obligation Under *Board of Regents v. Roth* to Rely on a State Law Source for the Property Right 6

II. The Decision of the Court of Appeals Conflicts With *Carey v. Piphus* Because it Fails to Permit Full Compensation for Injuries Proved to Have Been Caused by the Violation of Procedural Due Process 9

III. The Decision of the Fourth Circuit Conflicts With the Decision of the Sixth Circuit in *Stachura v. Truszkowski* and With the Decision of a Texas District Court 11

IV. The Decision of the Fourth Circuit Conflicts With *Perry v. Sindermann* and *Logan v. Zimmerman Brush Co.* Because it Nullifies a Damage Award for Injury to Interests Which Those Decisions Have Found to be Protected by Property 12

V. The Decision of the Fourth Circuit Negates Important Protections Conferred on School Administrators and Public Employees Generally by "For Cause" Contractual Clauses and Other Statutory Provisions 13

Conclusion 15

Appendix A

Order of the District Court Denying Motions for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial A-1

Opinion of the Court of Appeals (Original Decision) A-8

Order of the Court of Appeals Denying Petition for Rehearing A-15

Judgments of the Court of Appeals ... A-17

Appendix B

Petitioner's Employment Contract B-1

Model Superintendent's Contract (Joint Publication of the American Association of School Administrators and the National School Boards Association) B-10

Newspaper Articles B-20

TABLE OF AUTHORITIES

Page

Cases

Board of Regents v. Roth, 408 U.S. 564 (1972) ... 6,7,8,15

Busche v. Burkee, 649 F.2d 509 (7th Cir.), *cert. denied*, 454 U.S. 897 (1981) 10

Cannon v. Beckville Independent School District, 709 F.2d 9 (5th Cir. 1983) 7

Carey v. Piphus, 435 U.S. 247 (1978) 6,7,9,10,15

Cleveland Board of Education v. Loudermill, ____ U.S. ____, 105 S.Ct.1487 (1985) 9

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982).. 12

Perry v. Sindermann, 408 U.S. 593 (1972).....8,12

Robinson v. Houston-Galveston Area Council, 566 F. Supp. 370 (S.D. Tex. 1983) 11,12

Stachura v. Truszkowski, 763 F.2d 211 (6th Cir.) *cert. granted sub nom., Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct 22, 1985) (No. 85-410) 11,15

Tracey v. Sconnix Broadcasting of South Carolina, Inc., 284 S.C. 379, 325 S.E. 2d 542 (1985) 4,6,7,8

Constitutional Provision

U.S. Const., Amend. XIV, § 1 2

Statutory Provision

42 U.S.C. § 1983 2,3,5

No. _____

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, William B. Royster, respectfully prays that a writ of certiorari issue to review the judgments and opinion of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unreported opinion of the United States District Court for the District of South Carolina denying Respondents' motions[1] for judgment notwithstanding the verdict or, in the

[1]One post-trial motion was filed by the Board of Trustees of Anderson County School District No. 5 and the Board members in their official capacities. A separate motion was filed by the Board members in their

alternative, for new trial appears in Appendix A hereto (App. A-1 to A-7).

The opinion of the Court of Appeals for the Fourth Circuit on original decision is reported at 774 F. 2d 618 and appears in Appendix A (App. A-8 to A-14).

JURISDICTIONAL STATEMENT

The judgments of the Court of Appeals were dated and entered on October 3, 1985, and on December 3, 1985. A timely petition by Royster for a rehearing *en banc* was denied by order dated November 21, 1985. This petition for certiorari is filed within 90 days of that date. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution, which states, in pertinent part:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law....

U.S. Const., Amend. XIV, § 1.

Title 42, United States Code § 1983, which states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

---

individual capacities. Separate appeals to the Court of Appeals also were taken by the two defendant groups. This petition addresses the Court of Appeals opinion disposing of both appeals.

STATEMENT OF THE CASE

Petitioner, William B. Royster, brought this action under 42 U.S.C. § 1983 to recover damages from the School District and Respondents Board of Trustees and individual Board members because they terminated him as Superintendent in a manner which violated his contract and his right to due process, and which caused him emotional and professional injuries. The jury concluded that Royster had suffered substantial injury and award him $75,000 actual and $3,000 punitive damages. The Court of Appeals for the Fourth Circuit reversed. The Fourth Circuit held that Respondents had fully satisfied their constitutional obligation to Royster by continuing to pay his salary after terminating him and, therefore, were not liable under § 1983.

Royster served as Superintendent under a contract which guaranteed that he would not be discharged except "for cause" and only after notice and an opportunity for a hearing. (For text of discharge-for-cause provision of Petitioner's contract, see Appendix B hereto, App. B-7.) The model superintendent contract on which Royster's contract was based included a provision permitting the school district to terminate the superintendent unilaterally on 90-days notice with his remaining salary paid as severance pay. (For text of unilateral termination-with-pay provision of model contract, see App. B-18.) That provision, however, was deleted from Royster's contract during the negotiations between Royster and the Board (Rec. p. 96).[2]

In addition to its "for cause only" termination provision, Royster's contract specified his rights and duties as Superintendent. The contract stated that Royster would be "the chief executive officer of the Board" and would direct and assign teachers and other employees of the District. It obligated the Board to refer promptly "all criticisms, complaints, and suggestions" to Royster for study and recommendation (App. B-2). The contract gave Royster "the

---

[2]"Rec." followed by a number(s) refers to the appropriate page number(s) of the Joint Appendix filed with the Court of Appeals.

right to attend all Board meetings and all Board and citizens committee meetings, serve as an ex-officio member of all School Board committees, and provide adminstrative recommendations on each item of business considered by each of these groups" (App. B-2). The contract also provided that Royster would have release time and receive reimbursement for "travel and subsistence expenses" (App. B-3).[3]

Royster's contract with the Board did not expire until June 30, 1983 (App. B-9). Under state law Royster had a right to expect to continue to serve as Superintendent until his contract expired. The terms of the contract guaranteed his job unless he engaged in conduct "seriously prejudicial" to the District (App. B-7). Under the law of South Carolina, the contract gave Royster the right to continue to perform his duties and to hold himself out as "the superintendent," in addition to his right to a specified salary. *Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 325 S.E. 2d 542 (1985) (an employee under contract to fill a particular position is constructively discharged and has a claim for damages when his job title and duties are materially changed even though he receives equivalent or higher salary).

Respondents, however, ignored Royster's rights under his contract and undermined his legitimate expectations. Following a change in the composition of the Board, the Board on the night of January 11, 1983, voted to terminate Royster immediately even though there were six months left on his contract. The Board made no attempt to follow the for-cause procedures of the contract in taking its action.

Royster was not present at the meeting when the Board discharged him. He was at the time confined to his home on doctor's orders prior to back surgery. The Board informed Royster of its decision at once in a late night telephone call to him at home even though, as the Board knew, he was under

---

[3]When it suggested in dictum that one might persuasively argue that, under the terms of the contract, the Board had the right to control the duties of the Superintendent at all times, the Fourth Circuit misread the contract (App. A-14).

instructions to avoid any controversy prior to his operation (Rec. pp. 109, 115, 251). That same night, an interim superintendent was hired to replace Royster, and Royster was relieved of all authority (Rec. p. 118). The next day newspapers carried headlines stating that Royster had been "relieved," "dismiss[ed]," and "fire[d]" (Rec. p. 119).(For text of newspaper articles, see App.B-20 to B-23.)[4] Two days later all of Royster's personal and professional possessions in his office were boxed and removed (Rec. pp. 131-132).

The Board was aware that it was violating Royster's contract in terminating him and so stipulated at trial (Board's brief on appeal, p. 1). The Board attempted, however, to avoid any claim for damages by paying Royster the salary which his contract required. One Board member testified that an attorney had advised the Board "that if we lost the court suit because of [the termination] that what we would lose is what we would have already paid him" (Rec. p. 209). Although the Board labeled its action a "relieving of duties" with pay, the Board actually terminated Royster as if his contract had included the type of unilateral termination-with-pay provision contained in the model contract but eliminated from Royster's contract.

Royster sued because the salary he received did not compensate him for the damage to reputation, emotional distress, and other injuries he suffered as a result of his termination. At trial, Respondents contended that, even though they had violated the contract, Royster was not entitled to anything more than he already had received, *i.e.*, his salary. Both the trial court and the jury rejected Respondents' argument. At the conclusion of the trial, the district court directed a verdict of liability in Royster's favor on the contract and § 1983 claims and instructed the jury on the various elements of damages it could consider in reaching its

---

[4]In the only official statement which the Board issued regarding its actions, it was stated that "the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation" (App. B-23). Royster contended this statement was more than a simple "no comment," that, instead, references to "sensitive nature of this matter" and "possibility of litigation" damaged his reputation.

verdict. Those elements included injury to reputation as well as mental and emotional distress (Rec. p. 378).

Royster offered uncontradicted evidence that the improper manner in which he was discharged made it more difficult for him to find a new job than if his contract simply had been allowed to expire (Rec. pp. 279-280). He also demonstrated that the harsh and callous manner of his termination caused him mental and emotional distress (Rec. p. 117, 127). The jury concluded that Royster had suffered actual damage amounting to $75,000.

The Court of Appeals, however, ignored Royster's right to full damages under *Carey v. Piphus*, 435 U.S. 247 (1978), and held that Royster was entitled to nothing more than his salary. It concluded that "any constitutionally protected property interest Royster had as a result of his employment contract has been satisfied by payment of the full compensation due under the contract" (App. A-14). The Fourth Circuit chose to overlook Royster's state law right under *Tracey* to retain his contractual duties. It erroneously insisted that Royster had not been deprived of any right conferred by state law and protected by the Constitution. The Court of Appeals ruled that, because he received his salary, Royster had suffered no denial of due process and was not entitled to any damages under § 1983.

REASONS FOR GRANTING THE WRIT

I. THE FOURTH CIRCUIT'S DECISION NEGATES THE "COMPENSATION PRINCIPLE" OF *CAREY V. PIPHUS;* THE COURT NULLIFIES *CAREY* BY IGNORING ITS OBLIGATION UNDER *BOARD OF REGENTS V. ROTH* TO RELY ON A STATE LAW SOURCE FOR THE PROPERTY RIGHT

The decision of the Fourth Circuit conflicts in a fundamental way with *Carey v. Piphus*, 435 U.S. 247 (1978), in which this Court rejected the notion of "presumed" damages but held that a plaintiff may recover compensatory damages for a procedural due process violation when he can prove actual injuries caused in fact by the violation. Royster proved actual

injuries caused by his unconstitutional termination, and the jury awarded compensatory damages for those injuries. The Fourth Circuit overturned the damage award, contrary to *Carey,* by narrowly defining the property right created by Royster's employment contract so as to encompass only a right to receive salary under the contract. Contrary to *Board of Regents v. Roth,* 408 U.S. 564 (1972), the Fourth Circuit chose to overlook the state law source of the right, which clearly gave Royster an interest in the position itself, and, improperly "federalizing" the property interest inquiry, concluded by its own rule that Royster received all that he could legitimately claim when he was paid his salary.[5]

In *Roth,* 408 U.S. at 577, the Court stated that property interests are created and their dimensions defined by existing rules or understandings which stem from an independent source such as state law. In *Tracey v. Sconnix Broadcasting of South Carolina, Inc.,*[6] the Supreme Court of South Carolina held that a contract of employment gives an employee a legal right to his job title and the duties of his position, as specified in his contract. If the job title or duties are materially changed,

---

[5]The Fourth Circuit found support for its holding in *Cannon v. Beckville Independent School District,* 709 F.2d 9 (5th Cir. 1983), because the superintendent was paid his salary under the contract and denied recovery for damages. The court misconstrued the facts in *Cannon,* however, when it stated that the superintendent was removed from office while his contract was "still unexpired" (App. A-14). The issue in *Cannon* was whether the superintendent had a property right based on a claimed extension of his contract for one year. The Fifth Circuit concluded that the district court was clearly erroneous in finding that *Cannon* had a legitimate expectation that his contract had been extended and, therefore, held that there was no property right based on the claim of contract extension. 709 F.2d at 10. Because Cannon was paid his full salary under the expired contract and sued on his property claim for lost wages for the extension year, the court properly denied recovery after resolving the legitimacy of the claim of the extension against the plaintiff. *Cannon* thus was a case where the court determined that there was no property right present, not a case where the issue related to the nature or content of a property right found to exist.

[6]The *Tracy* case had not been decided at the time Royster filed his brief on appeal. The decision was brought to the attention of the Court of Appeals during the rehearing stage.

the employee is constructively discharged and has available a right of action for damages. Moreover, as the State Supreme Court pointed out in *Tracey*, it makes no difference that the employee would have earned the same or greater salary after the material change in duties. 284 S.C. at 381, 325 S.E. 2d at 554.

Thus, *Tracey* is a clear state law source for a legitimate claim of entitlement, and, therefore, a constitutional property right, in remaining in the position with materially unchanged duties, whether or not the salary of the position is paid.

The Fourth Circuit indicated that Royster failed to direct the court to any authority giving him the right to "physically possess" his job (App. A-13). The court appears to confuse the concept of property interest under *Roth* with possible limits on remedies in contract actions under state law. At one point in its opinion, the Fourth Circuit even refers to Royster as having a "property interest in his *contractual* right to expectation of continued employment..." (App. A-12) (emphasis added).

Viewing Royster's constitutional right more like a contract right, the Fourth Circuit seems to ask "can Royster, even though the contract has been breached, point to any authority giving him the right to compel the Board to let him occupy the position?" The court, however, was mistaken in its search for authority establishing a right to the remedy of specific performance when it had been referred to *Tracey* as the source for a right in the position itself. Royster never has sought specific performance; he sought damages for injuries which resulted from the deprivation, without due process, of his right to the position. By applying its own narrow concept of property, as being limited to salary, the Fourth Circuit, contrary to *Roth* and *Tracey*, defined away the substantive right upon which the damages were based.

In addition to overlooking *Tracey*, the Fourth Circuit ignored a "mutually explicit understanding," *see Perry v. Sindermann*, 408 U.S. 593, 601 (1972), of the parties that Royster was not subject to being terminated unilaterally with payment of salary, again violating *Roth*. The mutual understanding that Royster would not be "bought out" was based on deletion during contract negotiations of the

contractual provision which would have permitted unilateral termination with payment of the amount due under the contract. Coupled with the contractual discharge-only-for-cause provision, the mutual understanding that the Board did not have a "buy out" option created a legitimate expectation that Royster would not be removed, except "for cause."[7]

II. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH *CAREY V. PIPHUS* BECAUSE IT FAILS TO PERMIT FULL COMPENSATION FOR INJURIES PROVED TO HAVE BEEN CAUSED BY THE VIOLATION OF PROCEDURAL DUE PROCESS

The Fourth Circuit concluded that Respondents' constitutional obligation to Royster had been "satisfied by payment of the full compensation due under the contract" (App. A-14). The reason advanced by the court for its conclusion is that, otherwise, an employer would be unable "to relieve the employee from his duties although willing to compensate the employee *in full*" (App. A-13) (emphasis added). The fallacy with this reasoning is that, although Royster has been paid his salary, he has not been compensated "in full," as *Carey* requires.

As the Court of Appeals recognized, Royster had a "legitimate expectancy in continued employment" (App. A-13) based on his contract until that contract expired on June 30, 1983. The Board destroyed that expectation when it "relieved" Royster on January 11, 1983, without procedural

---

[7]The decision of the Fourth Circuit is also at odds with *Cleveland Board of Education v. Loudermill*, ____ U.S. ____, 105 S.Ct. 1487 (1985), in which this Court emphatically rejected the "bitter with the sweet" approach to the creation of property rights, under which rights are defined by, and conditioned on, the State's choice of procedures for their deprivation. The Fourth Circuit's decision effectively allows the State to compel an employee, through an involuntary "buy out," to relinquish his due process right to a pre-deprivation hearing, thus resurrecting the "bitter with the sweet" approach. Under *Loudermill* a State cannot deprive a person of a property right, without some kind of prior hearing. The Fourth Circuit's decision improperly permits the Board, by unilateral termination without a hearing, to effect a relinquishment of Royster's property right by paying salary only.

due process. Under *Carey*, Royster is entitled to recover for all actual injuries proved to have resulted from the unconstitutional deprivation.

The Fourth Circuit, again, was misled into believing that it was important to ask whether, under state law, Royster had "the right to actively engage in and execute the duties of his office" (App. A-13) against the wishes of his employer. *Cf. Carey*, 435 U.S. at 258 ("[t]he purpose of § 1983 would be defeated if injuries caused by the deprivation of constitutional rights went uncompensated simply because the common law does not recognize an analogous cause of action"). Royster's lawsuit did not attempt to compel the Board to permit him to remain on the job; it sought full damages for the injuries Royster suffered when he was terminated without notice or hearing. In *Carey* this Court made clear that general damages are recoverable for procedural due process violations. Regrettably, however, the Fourth Circuit's decision precludes this possibility altogether.

Royster established to the jury's satisfaction that he suffered actual damages as a result of the unilateral termination of his contract and job. He introduced evidence of the publicity which resulted from the Board's actions and showed how that publicity adversely affected his personal and professional reputation (App. B-20 to B-23; Rec. pp. 279-280). Reputational injuries are compensable in a procedural due process case. *See Busche v. Burkee*, 649 F. 2d 509, 519 & n. 13 (7th Cir. 1981) (injury to reputation caused by foreseeable publicity of unlawful termination properly considered as an element of damages), *cert. denied*, 454 U.S. 897 (1981). Royster also established that he suffered mental and emotional distress because of the harsh and callous manner in which he was terminated and then informed of the decision. These injuries also are compensable under *Carey*, 435 U.S. at 262.

In short, the decision of the Fourth Circuit is in direct and fundamental conflict with *Carey* because it denies Royster fair compensation for injuries he proved were caused by his termination without due process.

III. THE DECISION OF THE FOURTH CIRCUIT CONFLICTS WITH THE DECISION OF THE SIXTH CIRCUIT IN *STACHURA V. TRUSZKOWSKI* AND WITH THE DECISION OF A TEXAS DISTRICT COURT

The decision of the Fourth Circuit conflicts with the decision in *Stachura v. Truszkowski*, 763 F. 2d 211 (6th Cir.1985), *cert. granted sub nom., Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410), in which the Court of Appeals for the Sixth Circuit upheld a jury verdict against a school district for damages to a teacher's reputation and professional career based on adverse public statements surrounding the teacher's suspension with pay. While *Stachura* also involved other constitutional claims, it is clear from the questions presented in the school district's petition for writ of certiorari to this Court that damages for reputational injury were awarded based on a taking of "property" even though the teacher's removal from the position was with pay. Thus, the second question presented to the Court in the certiorari petition stated: "Whether the Court of Appeals erred by concluding that a suspension with pay coupled with adverse statements regarding that suspension consitutes a deprivation of property within the meaning of the Fourteenth Amendment." This Court denied certiorari of that question. *Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410).

Under *Stachura*, what is protected as "property" includes more than the interest in receiving salary. Reputational interests also are shielded. The Fourth Circuit in the instant case reached a different conclusion. There is no doubt that if the appeal in the present case had been to the Sixth Circuit, Royster's damage award would have been sustained. When the petition for certiorari was filed in *Stachura*, there was no conflict in the circuits. With the ruling of the Fourth Circuit in *Royster*, a conflict has been created which now should be resolved by this Court.

The decision of the Fourth Circuit also conflicts with *Robinson v. Houston-Galveston Area Council*, 566 F. Supp.

370 (S.D. Tex. 1983), where the court stated:

> This finding of a property interest is not affected by the fact that plaintiffs received no monetary compensation for their work. It is clear from *Roth* and its progeny that the determination of an interest as a "property" interest turns upon the finding of a claim of...entitlement to a benefit, rather than on the economic value of the benefit itself....

Id. at 376. Thus, *Robinson* emphasizes that the determination of "property" depends not on the economic value of the benefit but on the scope of the entitlement to the benefit, as determined by the underlying source of the right. In equating "property" with monetary benefit, the Fourth Circuit conflicts with *Robinson*.

IV. THE DECISION OF THE FOURTH CIRCUIT CONFLICTS WITH *PERRY V. SINDERMANN* AND *LOGAN V. ZIMMERMAN BRUSH CO.* BECAUSE IT NULLIFIES A DAMAGE AWARD FOR INJURY TO INTERESTS WHICH THOSE DECISIONS HAVE FOUND TO BE PROTECTED BY PROPERTY

The Fourth Circuit overturned damages awarded by the jury for injuries to interests of a kind which this Court has stated are protected under the rubric of "property." Before rendering its verdict, the jury was instructed on injury to reputation, emotional and mental distress, humiliation, and other injuries (Rec. p. 378). These are elements of damages for injuries to interests which this Court has indicated may be protected as "property."

In *Sindermann*, the Court remarked: "'Property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules or understandings.'" 408 U.S. at 601 (citations omitted). Similarly, in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), the Court stated:

> The hallmark of property...is an individual entitlement grounded in state law which cannot be removed except "for cause." Once that characteristic is found,

> the types of interests protected as "property" are varied, and, as often as not, intangible, relating "to the whole domain of social and economic fact."

Id. at 430 (citations omitted).

This Court, therefore, has made it clear that the interests which are protected by property, especially property created by for-cause protections, are broad in range and relate "to the whole domain of social and economic fact." It follows from the pronouncements of the Court in *Sindermann* and *Logan* that the intangible economic and social interests shielded by property encompass the right to be free from injury to reputation and infliction of mental and emotional distress. The Fourth Circuit's decision thus is in conflict not only with *Carey* but also with *Logan* and *Sindermann*.

V. THE DECISION OF THE FOURTH CIRCUIT NEGATES IMPORTANT PROTECTIONS CONFERRED ON SCHOOL ADMINISTRATORS AND PUBLIC EMPLOYEES GENERALLY BY "FOR CAUSE" CONTRACTUAL CLAUSES AND OTHER STATUTORY PROVISIONS

There are hundreds, if not thousands, of school superintendents who have contracts nearly identical to Royster's because his contract was based on the model contract published jointly by the American Association of School Administrators and the National School Boards Association. (For text of Royster's contract and AASA/NSBA model, see App. B-1 to B-19.) In addition, literally millions of public employees in this country have entered into employment contracts with discharge-for-cause provisions or similar protections under state civil service or tenure laws. The decision of the Fourth Circuit, if applied generally, would operate to deprive all those employees of their legitimate expectations that their for-cause protections are enforceable. If the decision in this case is allowed to stand, none of those public employees will have any assurance that their employment will continue absent "cause."

If a school board can oust the superintendent for any reason as long as it is willing to use the words "relieve from duties" and pay remaining salary, superintendents will have

no way to protect themselves from emotional and professional harm like that which was inflicted upon Royster. Any capable superintendent who falls into political disfavor could be discharged, and no matter what his contract says, given only a few months' pay, yet forced to bear substantial mental, emotional and professional injury.

Contracts like Royster's, which can be terminated only "for cause," create an expectation of more than a continued stream of income. They are designed to give superintendents, and other public employees, the job security which makes it more likely that they will be effective administrators or employees. A superintendent with a termination for-cause contract expects that he will be able to hold himself out to prospective employers and the world as "the superintendent" and to continue to receive the other non-monetary benefits of that status (aside from the pleasure of performing his job) for the length of his contract.

Royster's contract stated that the District had entered into the contract "to enhance administrative stability and continuity within the schools which District believes generally improves the quality of its overall educational program" and "to describe specifically their relationship" (App. B-1). Ultimately, the decision of the Fourth Circuit fosters instability in the public employer-employee relationship because that relationship depends on settled expectations and balanced interests which the court's decision disrupts. In the final analysis, therefore, the Fourth Circuit's decision has implications for the State's interests as well as for those of its employees.

Royster was entitled to assume that he would remain in his position and continue to receive all benefits from his job unless there was some "cause" for his termination. He was to have substantial protection from the changing whims of a politically chosen school board. The decision of the Fourth Circuit deprives Royster and many other public employees of this important bargained-for and earned protection.

CONCLUSION

The decision of the Fourth Circuit amounts to a frontal assault on the compensation principle of *Carey*, which is carried out through a failure to follow the dictates of *Roth*. The Fourth Circuit has overturned damages proved to have been caused by a termination without notice or opportunity to be heard. In so doing, the Fourth Circuit has overlooked a state law source for the property interest which created a right to remain in the position. By ignoring state law, the federal appeals court applied a rule that the right to continued employment is merely a right to continued salary. By limiting the property right to what Royster had already received, the Fourth Circuit eliminated the substantive basis for the jury's damage award and left Royster uncompensated for injuries he proved were caused in fact by his unlawful termination. The decision of the Court of Appeals conflicts with the Sixth Circuit's recent decision in *Stachura v. Truszkowski*. The decision of the Fourth Circuit also has serious implications for all public employees who heretofore have had legitimate expectations that their for-cause protections offer some degree of job security and shield from actions by their employers which are professionally and personally damaging.

For these reasons, this Court should grant certiorari, and the judgment below should be reversed.

Respectfully submitted,

Kenneth L. Childs
David T. Duff

Post Office Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Counsel for Petitioner, William B. Royster

February 19, 1986

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

William B. Royster,	)	
	)	CIVIL ACTION NO. 83-1544-14
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Board of Trustees of Anderson County School District Number Five; Tony Turner, Joe O. Bolt, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as Members of the Board of Trustees of Anderson County School District Number Five and as Individuals,	)	
Defendants.	)	

This matter is before the Court upon Defendants' motions for judgement notwithstanding the verdict or, in the alternative, for a new trial. The motions are denied.[1]

I.

Defendant Board of Trustees contracted for many years with Plaintiff to serve as Superintendent of School District Number Five. In September, 1982, the school board voted not to renew Plaintiff's contract which expired on June 30, 1983. The following month the board rescinded its September vote, deciding to consider the issue of contract renewal in January. On January 11, 1983, a majority of the board of trustees, including the individual Defendants, voted to terminate

[1]In denying these motions, the Court incorporates its reasons for denying Defendants' summary judgment motions as well as their motions during trial for a directed verdict.

Plaintiff immediately and elected a new superintendent to fill Plaintiff's unexpired term.

The parties' contract provided four specific grounds for termination during the term of the contract:

(1) Mutual agreement of the parties;
(2) Retirement of the superintendent;
(3) Disability of the superintendent; and
(4) Discharge for cause.[2]

Under the provision entitled "Discharge for Cause," the contract provides that notice of discharge for cause "shall be given in writing" to the superintendent, that the superintendent "shall be entitled to appear before the board to discuss [the] causes," and that the superintendent "shall be provided a written decision describing the results of the meeting [with the board regarding the discharge]."

It is undisputed that Plaintiff had no prior notice of the board's decision. In fact, the board's attorney met with Plaintiff during the afternoon of January 11 and conveyed the board members' message that they wanted him to retire early. Since Plaintiff was under a doctor's care awaiting surgery scheduled for January 14 in Atlanta, Georgia, he informed the board's attorney that additional time was necessary to make such an important decision. Aware of Plaintiff's medical condition, the board nevertheless voted that evening to terminate him effective immediately. The board's action was unquestionably final, for Plaintiff's office was promptly cleared out without his knowledge or permission and a new superintendent installed.

II.

After receiving his base salary for the remainder of the contract term, Plaintiff filed this action seeking damages under several causes of action, particularly 42 U.S.C. § 1983.

Defendants assert that Plaintiff has no Section 1983 due process claim. Defendants argue that: (1) Plaintiff had no property interest in continued employment; (2) Plaintiff was

---

[2]Any resignation or termination outside these four specific grounds would constitute a breach of contract.

not discharged in accordance with the terms of his contract of employment and he therefore had no right to rely on the notice provisions of the contract; and (3) Plaintiff waived any right he may have had to due process and is now estopped from claiming a due process deprivation.

Defendants rely heavily on *Cannon v. Beckville Independent Sch. Dist.*, 709 F.2d 9 (5th Cir. 1983). Because a headnote preceding the *Cannon* decision is purportedly on all fours with Plaintiff's due process claim, counsel argues that Defendants are entitled to judgment as a matter of law. Defendants' reliance on *Cannon* is misplaced.

In 1976, Cannon was hired as superintendent through June 30, 1979. In 1978, Cannon, but not the school board, signed a contract extending his employment for an additional year, July 1, 1979 through June 30, 1980. The school board chose not to extend Cannon's contract. Moreover, Cannon was relieved of his superintendent's duties a few months prior to June 30, 1979, and paid *all* of his salary for the remainder of the contract term.

Cannon's Section 1983 action rested not on a property interest in continued employment through June 30, 1979, but rather was premised on a claim of continued employment from July 1, 1979 through June 30, 1980. In this regard, the Court of Appeals for the Fifth Circuit agreed with the school district that Cannon had no more than a unilateral expectation in continued employment for the fourth year, the 1979-1980 school year. The court agreed with the school district that "Cannon lacked any property interest in its employment after June 30, 1979." *Id.* at 10.[3]

Defendants claim Plaintiff had no property interest in employment with the school district *after* June 30, 1983. I agree. Plaintiff's property interest, however, come from a legitimate expectation of continued employment through June 30, not from a unilateral expectation of renewal. Indeed, Plaintiff,

---

[3]Cannon's counsel's actions, as recited by the appellate court, demonstrate rather compellingly Cannon's reliance on continued employment for a fourth year: "The only correspondence from [Cannon's] attorney requested negotiations to settle Cannon's claim under the alleged extended contract [for the 1979-1980 school year]." *Id.* at 11.

unlike Cannon, never claimed a property interest in continued employment after June 30, for Plaintiff recognizes that his property interest existed only *during* the term of his contract.

Since Plaintiff's employment could be terminated before June 30 only pursuant to the contract's "discharge for cause" provision, he had a property interest in continued employment through June 30. "Ordinarily, a person who has been terminated during the *fixed period* of his or her employment as was the plaintiff here has a property right to [his] job *for that period* and may not be terminated during that period without a hearing." *Benfield v. Chester,* No. 83-1755, slip op. at 4 (4th Cir. May 8, 1984) (per curiam) (emphasis added) *citing Board of Regents v. Roth,* 408 U.S. 564, 567, 569-70 n.8 (1972).

Defendants argue that "[e]ven if the Plaintiff had a property interest in continuing his employment through June 30, 1983, if he was not discharged for cause, and there was no testimony that he was so discharged,[4] the procedural safeguards under the discharge for cause provision of the contract did not come into play." (Memorandum in support of Motion for Judgement N.O.V. or in the Alternative for a New Trial on behalf of the individual Defendants, filed May 3, 1984, 2.) This argument is without merit, for the due process clause, not the parties' contract, defines what process is constitutionally mandated when a property interest has been

---

[4]Defendants are correct in stating that Plaintiff was not discharged for cause and the Court so ruled. Plaintiff was discharged without cause and paid only his base salary. In December, 1982, the board of trustees took initial steps to review Plaintiff's performance in accordance with the contract terms. In January, with new board members taking office, compliance with the contract was disregarded and Plaintiff was terminated.

Defense counsel conceded that in the event the Court found a breach as a matter of law, Plaintiff was entitled to 26 days of accrued leave together with an adjustment of his retirement benefits. *See Royster v. Board of Trustees of Anderson County School District Number Five,* No. 83-1544 (D.S.C. June 5, 1984). Having determined that Plaintiff had been terminated in contravention of the contract terms, the Court granted Plaintiff's motion for a directed verdict as to the issue of liability, leaving only the issue of contract damages.

created. "At a minimum, due process usually requires adequate notice of the charges and a fair opportunity to meet them." *Bowens v. North Carolina Department of Human Resources*, 710 F.2d 1015, 1019 (4th Cir. 1983). Since Plaintiff neither had notice of the charges nor an opportunity to meet them, whatever they were, he was not afforded due process.

Defendants also take exception to the direction of a verdict against them on the defenses of waiver and estoppel.[5] The gist of this argument is that Plaintiff is barred from recovery since he accepted his base salary through June 30 and failed to request a post-termination hearing. Mere acceptance of some benefits due under a contract does not constitute a bar to a tort action. Indeed, a plaintiff is under a duty to mitigate damages. *See Berry v. Macon County Board of Education*, 380 F.Supp. 1244, 1248 (M.D.Ala. 1971); *Newbern v. Lake Lorelei, Inc.*, 308 F.Supp. 407, 417 (S.D.Ohio 1968). Concerning the failure to request a hearing, it was incumbent upon the school board to provide Plaintiff with notice of the charges against him and an opportunity to be heard. Nevertheless, a post-termination hearing would have been futile, for the school board's decision to terminate was admittedly final.[6] The defenses of waiver and estoppel do not apply to this case.

---

[5]Waiver is the intentional relinquishment or abandonment of a known right. No evidence was presented tending to show that Plaintiff waived any right except to the extent of his base salary which was paid to him through the term of his contract. The defense of estoppel required Defendants to prove, among other things, the element of detrimental reliance. Here, there was no such evidence.

[6]Again, *Cannon* lends Defendants no support. Cannon's failure to request a post-termination hearing was of no consequence since he had no right to due process in the first instance. The Court of Appeals for the Fifth Circuit apparently discussed Cannon's failure to request a hearing only because counsel on appeal had asserted Cannon's entitlement to damages *because of* the denial of a post-termination hearing. Plaintiff makes no such complaint.

III.

Defendants seek a new trial on the basis of the introduction into evidence of newspaper articles concerning Plaintiff's termination. It is claimed that the articles contained inadmissible hearsay and their probative value was outweighed by their prejudicial effect. The newspaper articles in question were not offered to prove the truth of the matter asserted. F.R.E. 801(c).[7] Moreover, the probative value of these articles was not substantially outweighed by the danger of unfair prejudice. F.R.E. 403. The articles were relevant and highly probative as injury to reputation is a compensable injury in a procedural due process action for wrongful termination. *See Busche v. Burkee*, 649 F.2d 509, 519 n.13 (7th Cir. 1981).

Defendants contend that the jury charge and the form of the verdict were objectionable in many respects although proper exception was taken to only a few of the assigned errors. Fed.R.Civ.P. 51. I have carefully reviewed all allegations of error and find the jury instructions, when considered piecemeal, as suggested by Defendants, or as a whole, correctly stated the applicable law. I also find the verdict form to be unexceptionable.

The Court's characterization of the board's actions as "improper" did not unfairly prejudice Defendants, for Defendants did indeed violate Plaintiff's right to due process. Concerning damages, the jury was carefully instructed that Plaintiff had the burden of proving that his damages, if any were proximately caused by the due process violation.

During deliberations, the jury inquired of the Court concerning Plaintiff and the state retirement system. Plaintiff's retirement benefits, of course, concerned only his breach of contract claim. With the parties' consent, the Court responded to the jury in writing not to consider Plaintiff's retirement benefits as an element of damages. Defendants were not prejudiced by the jury's initial confusion which was corrected by instructions approved by Defendants.

---

[7]To the extent individual defendants made the statements attributed to them, which they did not deny, the statements were admissible under F.R.E. 801(d)(2)(A).

The Court instructed the jury as to both objective and subjective factors concerning the qualified immunity defense. This, Defendants maintain, ignores *Harlow v. Fitzgerald,* 457 U.S. 800 (1982), and its puported elimination of subjective factors in a qualified immunity defense. This Court reads *Harlow's* emphasis on objective factors as a means to facilitate summary adjudication in favor of public officials burdened by insubstantial claims. Consideration of subjective factors, however, is not ignored, particularly with claims that are not insubstantial and proceed to trial. *McElveen v. County of Prince William,* 725 F.2d 954, 957-58 (4th Cir. 1984). The jury's consideration of subjective factors was, therefore, proper.

Finding no basis on which to grant a motion for either a judgment n.o.v. or a new trial, Defendants' motions are denied.

AND SO IT IS ORDERED,

/s/ William W. Wilkins, Jr.
WILLIAM W. WILKINS, JR.
UNITED STATES DISTRICT JUDGE

Greenville, S.C.
June 22, 1984

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1935

William B. Royster,

Appellee

versus

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5,

Appellants

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as individuals,

Defendants

No. 84-1936

William B. Royster,

Appellee

versus

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals,

Appellants

and

Board of Trustees of Anderson
County School District Number Five;
Ann W. Huitt, Brenda H. Coelz,
Joe O. Bolt, Cynthia W. Williford,
Carol H. Floyd, as members of
the Board of Trustees of Anderson
County School District Number Five;
and Anderson County School District
Number 5,

Defendants

Appeals from theUnited States District Court for the District of South Carolina, at Anderson. William W. Wilkins, Jr., District Judge. (C/A 83-1544-14)

Argued April 2, 1985 Decided October 3, 1985

Before WIDENER and WILKINSON, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Bruce A. Byrholdt; Cary C. Doyle (C. Thomas Cofield, III; Doyle & Cofield; Chapman & King, on brief) for Appellants; Kenneth L. Childs (David T. Duff; Childs, Duff & St. Pierre, on brief) for Appellee.

WIDENER, Circuit Judge:

William Royster brought this action for damages under 42 U.S.C. § 1983 against the Board of Trustees for Anderson County School District #5 (Board), South Carolina, and the Trustees in their individual capacities, claiming a violation of due process rights as a result of Royster's termination as superintendent of Anderson County School District #5. In a trial to a jury, the district court directed a verdict for Royster and against the Board, finding that Royster's dismissal amounted to the taking of a property interest without due process of law in violation of the Fourteenth Amendment. The issue of damages and individual trustee liability was submitted to the jury, which awarded actual damages against the Board and four trustees and punitive damages against the four trustees. The Board and individual trustees appeal, and we reverse.

I

William Royster was the superintendent of Anderson County School District #5 from 1967 until January 11, 1983. During that period, Royster had been employed under a series of multi-year contracts which periodically had been renewed or extended. Royster's final employment contract was dated November 11, 1980, and orginally covered the two-year period from July 1, 1980 to June 30, 1982. In September, 1981, that contract was extended for an additional year, to June 30, 1983.

In September 1982, the Board voted not to renew Royster's contract beyond June 30, 1983. After a series of reconsiderations on Royster's employment status, the Board, on January 11, 1983, informed Royster that he was being relieved of his duties as superintendent effective immediately but with full pay and benefits through June 30, 1983, the effective termination date of his contract. Royster was given no reason for his removal, and the Board gave no reason in its public announcement of the decision. Between January 11, 1983 and June 30, 1983, Royster received and accepted, in monthly checks, the compensation owed to him under the contract.

In bringing this action, Royster also sought damages for

breach of contract, defamation, outrage, invasion of privacy and deprivation of a liberty interest under § 1983. Following motions for summary judgment, the claims of defamation, outrage and deprivation of a liberty interest were either dismissed or withdrawn, and are not now before us. The district court directed a verdict in favor of all defendants on the claim of invasion of privacy, and this is not an issue on appeal. On the breach of contract claim, the district court directed a verdict in favor of Royster, concluding that his dismissal constituted an improper discharge under the discharge for cause provisions of his employment contract. The Board stipulated that the district court assess damages for the breach, based on 26 days of unused annual leave. The Board has not appealed this decision.[1]

In directing a verdict for Royster on the due process claim, the district court determined that Royster's employment contract had created an expectation of continued employment through June 30, 1983, in turn establishing a constitutionally protected property interest subject to minimal due process under the Fourteenth Amendment. The court then concluded that in removing Royster from his position without adequate notice of the reasons and a fair opportunity to respond to them, the Board violated the notice and hearing requirements of the contract, constituting a taking of Royster's property interest without the minimally required due process.

Since we now decide that Royster had no constitutionally protected property interest, we need not address the other issues raised on appeal.

II

A public employee who is discharged without a hearing, and then seeks to invoke the protection of the due process clause of the Fourteenth Amendment, must first establish that he has been deprived of a liberty of property interest protected by that clause. *Board of Regents v. Roth*, 408 U.S. 564, 569-570 (1972); *Wooten v. Clifton Forge School Bd.*,

[1]The judgment of the district court does not take this sum into account, so we assume the sum has been paid or agreed arrangements for payment of the same have been made.

655 F. 2d 552, 554 (4th Cir. 1981); *Prince v. Bridges*, 537 F. 2d 1269, 1270-1271 (4th Cir. 1976). It is only when such interests exist that the State must afford a hearing. *Wooten v. Clifton Forge School Bd.*, 655 F. 2d at 554. Since the liberty interest claim is no longer in this case, we concern ourselves solely with Royster's allegation of a deprivation of a property interest.

The requirements for the establishment of a constitutionally protected property interest were set forth in *Board of Regents v. Roth*, 408 U.S. at 577:

> To have a property interest in a benefit [job], a person clearly must have more than an abstract desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

See *Prince v. Bridges*, 537 F. 2d at 1271. In order to determine the existence of such a legitimate claim of entitlement, we must look to "existing rules or understandings that stem from an independent source such as State law...." *Board of Regents v. Roth*, 408 U.S. at 577; see *Beckham v. Harris*, 756 F. 2d 1032, 1036 (4th Cir. 1985). In the context of employment in public education, the independent source for the property interest has been said to be a contract which provides for continued employment, and which can be terminated only for good cause. See *Wooten v. Clifton Forge School Bd.*, 655 F. 2d at 554. Thus, only where the employee has a legitimate entitlement to continued employment do the requirements of due process attach. See *Board of Regents v. Roth*, 408 U.S. at 577; *Beckham v. Harris*, 756 F. 2d at 1036.

The extent, if any, of consitutional protection afforded Royster's property interest in his contractual right to expectation of continued employment through June 30, 1983, under other circumstances, is a question we need not decide. See the language in *Wooten v. Clifton Forge School Board*, 655 F. 2d 552-554 (4th Cir. 1981); *Kilcoyne v. Morgan*, 664 F. 2d 940-942 (4th Cir. 1981); *Sigmon v. Poe*, 564 F. 2d 1093-1096 (4th Cir. 1977); and *Heath v. Fairfax Co.*, 550 F. 2d 959 (4th Cir. 1977). As earlier implied, the facts of

this case do not present ordinary circumstances. We have here a public employee with a contractual right to continued employment through June 30, 1983. On January 11, 1983, however, Royster was informed that he was being relieved of his duties as superintendent, but with full salary and benefits through the end of the contractual period. In response, Royster accepted the compensation.

This leaves the sole issue before us as whether Royster's property interest, i.e. the legitimate expectancy in continued employment, included not only the right to receive the compensation guaranteed under the contract, but also the right to actively engage in and execute the duties of his office. We recognize that the Board breached its contractual obligation in the procedure followed in Royster's release from duties. However, not every breach of a public employment contract amounts to a constitutional violation. See *Kilcoyne v. Morgan,* 664 F. 2d 940, 942 (4th Cir. 1981); *Sigmon v. Poe,* 564 F. 2d 1093, 1096 (4th Cir. 1977). In the present instance, careful consideration of the issue has persuaded us that Royster's contract afforded him only the right to be fully compensated, and not the right to occupy the office of superintendent.

Royster has directed us to no authority which supports the proposition that a property interest in the continued expectation of public employment includes the right to physically possess a job, in defiance of the stated desire of the employer; nor has our own review revealed such authority. Indeed, to hold that Royster had a constitutionally protected property interest in continuing to perform his services would make it impossible for a public employer, dissatisfied with an employee's performance, but without specific contractual cause to discharge him, to relieve the employee from his duties although willing to compensate the employee in full. This is a situation full of difficulty and one which has received no support from the South Carolina Court, the Supreme Court, nor the courts of appeals, including our own.[2]

We are convinced that any constitutionally protected property interest Royster had as a result of his employment contract has been satisfied by payment of the full compensation due under the contract.

Our holding here is supported by the Fifth Circuit's decision in *Cannon v. Beckville Independent School District*, 709 F. 2d 9 (5th Cir. 1983), involving facts not unlike those before us. In *Cannon*, a school superintendent was removed from office while his contract was still unexpired. As here, the school district in *Cannon* paid in full the plaintiff's remaining compensation under the contract, and the court found no property interest exsisted. Id. at 11. We find the holding in *Cannon* persuasive.

Accordingly, the judgment of the district court is

REVERSED.

---

[2]It may be persuasively argued that, under the terms of the contract, the Board had the right to control the duties of the Superintendent at all times, including relieving him of any duty. If that be true, then Royster could maintain only a unilateral expectation with respect to being allowed to perform his duties, not a constitutionally protected property interest. *Board of Regents v. Roth*, p. 577. We need not rest our decision on that ground, however.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 84-1935

William B. Royster,

Appellee

versus

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5,

Appellants

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as individuals,

Defendants

No. 84-1936

William B. Royster,

Appellee

versus

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals,

Appellants

and

Board of Trustees of Anderson
County School District Number Five;
Ann W. Huitt, Brenda H. Coelz,
Joe O. Bolt, Cynthia W. Williford,
Carol H. Floyd, as members of
Anderson County School District
Number Five; and Anderson County
School District Number 5,

Defendants

ORDER

The petition amicus curiae for rehearing and suggestion for rehearing en banc of the American Association of School Administrators, which is treated as a brief amicus curiae, is ORDERED to be filed.

There being no request for a poll of the court, it is accordingly ADJUDGED and ORDERED that the petition for rehearing en banc shall be, and it hereby is, denied.

The panel has considered the petition for rehearing and is of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and it hereby is, denied.

Judge Russell did not participate in this decision.

With the concurrences of Judge Wilkinson and Judge Butzner.

/s/ J. Widener

For the Court

JUDGMENT

United States Court of Appeals

for the FOURTH CIRCUIT

No. 84-1935
C/A 83-1544-14

William B. Royster, Appellee,

v.

Board of Trustees of Anderson County School District Number Five; Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District Number Five; and Anderson County School District Number 5, Appellants,

and

Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as Individuals, Defendants,

Appeal from the United States District Court for the District of South Carolina

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, ***and was argued by counsel.***

On consideration whereof, it is now here ordered and adjudged by this Court that the

judgement of the said District Court appealed from, in this cause, be, and the same is hereby,

Reversed.

/s/ John M. Greacen

CLERK

JUDGMENT

United States Court of Appeals

for the

FOURTH CIRCUIT

No. 84-1936
C/A 83-1544-14

William B. Royster, Appellee,

v.

Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as Individuals, Appellants,

and

Board of Trustees of Anderson County School District Number Five; Ann W. Huitt, Brenda H. Coelz, Joe O. Bolt, Cynthia W. Williford, Carol H. Floyd, as Members of the Board of Trustees Anderson County School District Number Five; and Anderson County School District Number 5, Defendants,

Appeal from the United States District Court for the District of South Carolina

This cause came on to be heard on the record from the United States District Court for the District of South Carolina, ***and was argued by counsel.***

On consideration whereof, it is now here ordered and adjudged by this Court that the

judgement of the said District Court appealed from, in this cause, be, and the same is hereby,

Reversed.

/s/ John M. Greacen

CLERK

APPENDIX B

EMPLOYMENT CONTRACT
BETWEEN
WILLIAM B. ROYSTER
AND THE
GOVERNING BOARD
ANDERSON SCHOOL DISTRICT NUMBER FIVE
OF ANDERSON COUNTY, SOUTH CAROLINA

This Employment Contract, made and entered into this *11th* day of *November, 1980,* and supersedes previous contracts by and between the Governing Board of *Anderson School District Number Five of Anderson County,* hereinafter referred to as DISTRICT, and *William B. Royster,* hereinafter referred to as SUPERINTENDENT. WHEREAS, DISTRICT desires to provide SUPERINTENDENT with a written employment contract in order to enhance administrative stability and continuity within the schools which DISTRICT believes generally improves the quality of its overall educational program; and, WHEREAS, DISTRICT and SUPERINTENDENT believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their goverance and administrative functions in the operation of the educational program of the schools;
NOW, THEREFORE, DISTRICT AND SUPERINTENDENT, for the consideration herein specified, agree as follows:

1. TERM

DISTRICT, in consideration of the promises, herein contained, of SUPERINTENDENT, hereby employs, and SUPERINTENDENT hereby accepts employment as Superintendent of Schools for a term commencing *July 1, 1980,* and ending *June 30, 1982.* DISTRICT may by specific action and with the consent of SUPERINTENDENT extend the termination date of the existing contract.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF SUPERINTENDENT

A. CERTIFICATION. SUPERINTENDENT shall hold a valid certificate issued by the *State of South Carolina.*

B. DUTIES. SUPERINTENDENT shall have charge of the administration of the schools under the direction of the Board. He shall be the chief executive officer of the Board; shall direct and assign teachers and other employees of the schools under his supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the DISTRICT subject to the approval of the Board; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district, and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the Board from time to time. The Board, individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation. The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serve as an ex-officio member of all School Board committees and provide administrative recommendations on each item of business considered by each of these groups.

C. OUTSIDE ACTIVITIES. SUPERINTENDENT shall devote his time, attention and energy to the business of the school district. However, he may serve as a consultant to other districts or educational agencies, lecture, engage in writing activities and speaking engagements, and engage in other activities which are of a short-term duration at his discretion. Such activities which require the superintendent to be absent from the school district for more than three consecutive full working days or for a total of five days per annum shall be reported to the Board for approval. In no case will DISTRICT be responsible for any expenses attendant to the performance of such outside activities.

3. PROFESSIONAL GROWTH OF SUPERINTENDENT. DISTRICT encourages the continuing professional growth of SUPERINTENDENT through his participation, as he might decide in light of his responsibilities as SUPERINTENDENT, in:

a) The operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations;

b) seminars and courses offered by public or private educational institutions; and

c) informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of SUPERINTENDENT to perform his professional responsibilities for DISTRICT.

In its encouragement, DISTRICT shall permit a reasonable amount of release time for SUPERINTENDENT as he deems appropriate, to attend to such matters and pay for the necessary fees for travel and subsistence expenses, as approved by the DISTRICT in the annual budget.

4. COMPENSATION

Salary. DISTRICT shall pay SUPERINTENDENT at an annual salary rate of *Forty-seven Thousand Three Hundred Eighty DOLLARS ($47,380)*. This annual salary rate shall be paid to SUPERINTENDENT in installments of one-twelfth of the annual salary rate on the first day of each month for his services rendered during the preceding month or in accordance with the schedule of salary payments in effect for other certified employees, at the option of SUPERINTENDENT. DISTRICT AND SUPERINTENDENT may mutually agree to adjust the salary of SUPERINTENDENT during the term of his contract, but in no event shall he be paid less than the salary he is presently receiving. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and become part of this contract, but it shall not be deemed that DISTRICT and SUPERINTENDENT have entered into a new contract nor that the termination date of the existing contract has been extended.

5. VACATION AND OTHER BENEFITS

A. SUPERINTENDENT shall be entitled to all the benefits applicable to twelve (12) month administrative employees as are incident to their employment relationship with DISTRICT, including, but not limited to, vacation and illness benefits and leaves, any other forms of insurance

protection, retirement program, choice of tax-sheltered annuities, and other administrative employee benefits.

B. DISTRICT shall pay 100 percent of SUPERINTENDENT'S membership charges to the American Association of School Administrators (currently $125) and the South Carolina Association of School Administrators (currently $140) membership in which the SUPERINTENDENT feels it is necessary to maintain and improve his professional skills, as permitted by State Law and as approved by DISTRICT in the annual budget.

6. AUTOMOBILE ENTITLEMENT

In light of the unique nature of the professional duties of the superintendent of schools, DISTRICT shall provide SUPERINTENDENT with an annual allocation of Three Thousand Dollars ($3,000) for in-district travel expenses in lieu of providing an automobile.

7. PROFESSIONAL LIABILITY

A. DISTRICT agrees that it shall defend, hold harmless, and indemnify SUPERINTENDENT from any and all demands, claims, suits, actions and legal proceedings brought against SUPERINTENDENT in his individual capacity, or in his official capacity as agent and employee of the DISTRICT, provided the incident arose while SUPERINTENDENT was acting within the scope of his employment and excluding criminal litigation and as such liability coverage is within the authority of the school board to provide under State Law. Except that, in no case, will individual board members be considered personally liable for indemnifying SUPERINTENDENT against such demands, claims, suits, actions and legal proceedings.

B. DISTRICT shall not, however, be required to pay any costs of any legal proceedings in the event DISTRICT AND SUPERINTENDENT have adverse interests in such litigation.

8. PERSONAL PROTECTION

In light of the unique nature of the professional duties of superintendent of schools, DISTRICT shall, at its expense, provide protection for the SUPERINTENDENT:

In the event the life or safety of SUPERINTENDENT or his family is threatened or otherwise appears in danger because of the performance of SUPERINTENDENT'S official duties, DISTRICT shall pay reasonable costs incident to the protection of the SUPERINTENDENT and his family. The superintendent can request DISTRICT to pay all or part of the charges. Protection, if required, will be sought first from the regular police authorities.

9. GOALS AND OBJECTIVES

On or prior to the execution of this contract, the parties shall meet to establish DISTRICT goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which SUPERINTENDENT is evaluated as hereafter provided. On or prior to *June 30* of each succeeding school year, the parties will meet to establish DISTRICT goals and objectives for the next succeeding school year, in the same manner and with the same effect as heretofore described.

10. EVALUATION

The Board shall evaluate and assess in writing the performance of SUPERINTENDENT at least once a year during the term of this contract. This evaluation and assessment shall be reasonably related to the position description of SUPERINTENDENT and the goals and objectives of the DISTRICT for the year in question. SUPERINTENDENT shall submit to the Board a recommended format for this written evaluation and assessment of his performance within one hundred eighty (180) days of the effective date of this contract. The Board shall meet and discuss the evaluation format with the SUPERINTENDENT, attempting in good faith to agree on the development and adoption of a mutually agreeable evaluation format. In any event, the Board shall adopt an evaluation format within 150 days of the effective date of this contract and shall evaluate the SUPERINTENDENT pursuant thereto within *120 days* prior to the expiration of the first year of the term of his contract.

At least once each fiscal year, DISTRICT and

SUPERINTENDENT shall meet in closed executive session for the purpose of mutual evaluation of the performance of DISTRICT and SUPERINTENDENT. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the SUPERINTENDENT. The SUPERINTENDENT shall have the right to make a written reaction or response to the evaluation. This response shall become a permanent attachment to the SUPERINTENDENT'S personnel file. Within thirty days of the delivery of the written evaluation to the SUPERINTENDENT, the Board shall meet with the SUPERINTENDENT to discuss the evaluation.

11. RENEWAL OF EMPLOYMENT CONTRACT

The Board of Trustees shall review the SUPERINTENDENT'S contract annually at the January meeting of the Board of Trustees and notify the SUPERINTENDENT in writing of any action taken.

12. TERMINATION OF EMPLOYMENT CONTRACT

This employment contract may be terminated by:

A. Mutual agreement of the parties
B. Retirement of SUPERINTENDENT
C. Disability of SUPERINTENDENT

In the event of disability by illness or incapacity, after SUPERINTENDENT'S sick leave has been exhausted, the compensation shall be reinstated after SUPERINTENDENT has returned to employment and undertaken the full discharge of his duties. DISTRICT may terminate this contract by written notice to SUPERINTENDENT at any time after SUPERINTENDENT has exhausted any accumulated sick leave and such employment for whatever cause for an additional continuous period of *thirty work days.* All obligations of DISTRICT shall cease upon such termination.

If a question exists concerning the capacity of

SUPERINTENDENT to return to his duties, DISTRICT may require SUPERINTENDENT to submit to a medical examination, to be performed by a doctor licensed to practice medicine. DISTRICT and SUPERINTENDENT shall mutually agree upon the physician who shall conduct the examination. The examination shall be done at the expense of the DISTRICT. The physician shall limit his report to the issue of whether SUPERINTENDENT has a continuing disability which prohibits him from performing his duties.

D. Discharge for cause

Discharge for cause shall constitute conduct which is seriously prejudicial to DISTRICT, including but not limited to, neglect of duty, or breach of contract. Notice of discharge for cause shall be given in writing and SUPERINTENDENT shall be entitled to appear before the Board to discuss such causes. If SUPERINTENDENT chooses to be accompanied by legal counsel at such meeting, he shall bear any costs therein involved. Such meeting shall be conducted in closed, executive session. SUPERINTENDENT shall be provided a written decision describing the results of the meeting.

13. SAVINGS CLAUSE

If, during the term of this contract it is found that a specific clause of the contract is illegal in federal or state law, the remainder of the contract not affected by such ruling, shall remain in force.

IN WITNESS WHEREOF, DISTRICT has caused this Employment Contract to be approved in his behalf by a duly authorized officer and SUPERINTENDENT has approved this Employment Contract effective on the day and year specified in paragraph 1, above.

SUPERINTENDENT

/s/ William B. Royster

ANDERSON SCHOOL
DISTRICT NUMBER FIVE

By /s/ William M. Burriss
Chairman, Board of Trustees

/s/ Terry M. Neel
Witness 12/9/80

The DISTRICT'S Legal Counsel has reviewed the contract and finds it legally acceptable.

This Employment Contract was approved by vote of the School Board at a public meeting duly held on *November 11, 1980,* and has been made a part of the minutes for that meeting.

AMENDMENT TO
EMPLOYMENT CONTRACT
BETWEEN
WILLIAM B. ROYSTER
AND THE
GOVERNING BOARD OF THE
ANDERSON SCHOOL DISTRICT NUMBER FIVE
OF ANDERSON COUNTY, SOUTH CAROLINA

The contract issued to William B. Royster and approved by the Board of Trustees of Anderson School District Number Five of Anderson County on November 11, 1980, and signed by the chairman on December 9, 1980, has been amended. The following amendments were approved by the Board of Trustees at its regular meeting on Tuesday, September 8, 1981.

Amendment No. 1: The salary of the superintendent shall be increased by seven per cent (7%) effective July 1, 1981, for an annual salary of Fifty Thousand Six Hundred Ninety-seven Dollars ($50,697).

Amendment No. 2: The length of the contract was extended one year beginning July 1, 1982, and ending on June 30, 1983.

SUPERINTENDENT

/s/ William B. Royster

ANDERSON SCHOOL
DISTRICT NUMBER FIVE

By /s/ William M. Burriss
Chairman, Board of Trustees

/s/ Betty S. Grimblis
Witness

9/28/81
Date

SAMPLE CONTRACT

(A Compilation of Provisions for a)
SAMPLE EMPLOYMENT CONTRACT
BETWEEN

_____

AND THE
GOVERNING BOARD OF THE
_____ **SCHOOL DISTRICT**
OF _____

This Employment Contract, made and entered into this _____ day of _____, 19 ____, by and between the Governing Board of the _____ School District of _____, hereinafter referred to as **DISTRICT,** and _____, hereinafter referred to as **SUPERINTENDENT.**

WHEREAS, DISTRICT desires to provide **SUPERINTENDENT** with a written employment contract in order to enhance administrative stability and continuity within the schools which **DISTRICT** believes generally improves the quality of its overall educational program; and, **WHEREAS, DISTRICT** and **SUPERINTENDENT** believe that a written employment contract is necessary to describe specifically their relationship and to serve as the basis of effective communication between them as they fulfill their governance and administrative functions in the operation of the education program of the schools;

NOW, THEREFORE, DISTRICT and **SUPERINTENDENT,** for the consideration herein specified, agree as follows:

1. TERM.
DISTRICT, in consideration of the promises, herein contained, of **SUPERINTENDENT,** hereby employs, and **SUPERINTENDENT** hereby accepts employment as Superintendent of Schools for a term commencing _____, 19 ____, and ending _____, 19 ____.

DISTRICT may by specific action and with the consent of

SUPERINTENDENT extend the termination date of the existing contract to the full extent permitted by state law.

2. PROFESSIONAL CERTIFICATION AND RESPONSIBILITIES OF SUPERINTENDENT.

A. CERTIFICATION. SUPERINTENDENT shall hold a valid certificate issued by the _____.

B. DUTIES. SUPERINTENDENT shall have charge of the administration of the schools under the direction of the Board. He (she) shall be the chief executive officer of the Board; shall direct and assign teachers and other employees of the schools under his (her) supervision; shall organize, reorganize and arrange the administrative and supervisory staff, including instruction and business affairs, as best serves the **DISTRICT** subject to the approval of the Board; shall select all personnel subject to the approval of the Board; shall from time to time suggest regulations, rules and procedures deemed necessary for the well ordering of the school district, and in general perform all duties incident to the office of the Superintendent and such other duties as may be prescribed by the Board from time to time. The Board, individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to the Superintendent for study and recommendation. The Superintendent shall have the right to attend all Board meetings and all Board and citizen committee meetings, serve as an ex-officio member of all School Board committees and provide administrative recommendations on each item of business considered by each of these groups.

C. OUTSIDE ACTIVITIES. SUPERINTENDENT shall devote his (her) time, attention and energy to the business of the school district. However, he (she) may serve as a consultant to other districts or educational agencies, lecture, engage in writing activities and speaking engagements, and engage

in other activities which are of a short-term duration at his (her)discretion. Such activities which require the superintendent to be absent from the school district for more than _____ _____ full working days shall be reported to the Board for approval. **SUPERINTENDENT** may at his (her) option, and with the approval of the Board of Education, continue to draw a salary while engaged in the outside activity as described above. In such cases honoraria paid **SUPERINTENDENT** in connection with these activities shall be transferred to the **DISTRICT.** If **SUPERINTENDENT** chooses to use vacation leave to perform outside activities, he (she) shall retain any honoraria paid. In no case will **DISTRICT** be responsible for any expenses attendant to the performance of such outside activities.

3. PROFESIONAL GROWTH OF SUPERINTENDENT.

DISTRICT encourages the continuing professional growth of **SUPERINTENDENT** through his (her) participation, as he (she) might decide in light of his (her) responsibilities as **SUPERINTENDENT,** in:

a. the operations, programs and other activities conducted or sponsored by local, state and national school administrator and school board associations;

b. seminars and courses offered by public or private educational institutions; and

c. informational meetings with other persons whose particular skills or backgrounds would serve to improve the capacity of **SUPERINTENDENT** to perform his (her) professional responsibilities for **DISTRICT.**

In its encouragement, **DISTRICT** shall permit a reasonable amount of release time for **SUPERINTENDENT** as he (she) deems appropriate, to attend such matters and pay for the necessary fees for travel and subsistence expenses, as approved by the District in the annual budget.

4. COMPENSATION.

Salary. **DISTRICT** shall pay **SUPERINTENDENT** at an annual salary rate of _____ **DOLLARS**. This annual salary rate shall be paid to

SUPERINTENDENT in installments of one-twelfth of the annual salary rate on the first day of each month for his (her) services rendered during the preceding month or in accordance with the schedule of salary payments in effect for other certified employees, at the option of **SUPERINTENDENT**.

DISTRICT and **SUPERINTENDENT** may mutually agree to adjust the salary of **SUPERINTENDENT** during the term of this contract, but in no event shall he (she) be paid less than the salary he (she) is presently receiving. Any adjustment in salary made during the life of this contract shall be in the form of an amendment and become part of this contract, but it shall not be deemed that **DISTRICT** and **SUPERINTENDENT** have entered into a new contract nor that the termination date of the existing contract has been extended.

5. **VACATION AND OTHER BENEFITS.**

A. SUPERINTENDENT shall be entitled to all the benefits applicable to twelve (12) month administrative employees as are incident to their employment relationship with **DISTRICT**, including, but not limited to, vacation and illness benefits and leaves, any other forms of insurance protection, retirement program, choice of tax-sheltered annuities, and other adminstrative employee benefits.

B. District shall purchase disability policy naming the superintendent that will provide an income to the superintendent equal to at least fifty (50%) percent of the contractual salary.

C. District shall pay 100 percent of Superintendent's membership charges to the American Association of School Administrators, the _____ Association of School Administrators and these other professional groups, (specific names of groups to be included in this contract) membership in which the Superintendent feels it is necessary to maintain and improve his (her) professional skills, as permitted by State law and as

approved by **DISTRICT** in the annual budget.

6. EXPENSES.

DISTRICT shall pay or reimberse **SUPERINTENDENT** for reasonable expenses approved by **DISTRICT** and incurred by **SUPERINTENDENT** in the continuing performance of his (her) duties under this Employment Agreement and in moving him (her) and his (her) family from _____ to the location of **DISTRICT,** as permitted by State law and as approved by **DISTRICT** in the annual budget.

7. AUTOMOBILE ENTITLEMENT.

In light of the unique nature of the professional duties of the Superintendent of Schools, **DISTRICT** shall provide **SUPERINTENDENT** with an automobile for his (her) business use. The automobile shall be fully maintained by **DISTRICT**, inciuding, but not limited to, keeping the automobile in safe, usable condition, and providing for all expenses incidential to automobile usage.

8. PROFESSIONAL LIABILITY.

A. DISTRICT agrees that it shall defend, hold harmless, and indemnify **SUPERINTENDENT** from any and all demands, claims, suits, actions and legal proceedings brought against **SUPERINTENDENT** in his (her) individual capacity, or in his (her) official capacity as agent and employee of the **DISTRICT,** provided the incident arose while **SUPERINTENDENT** was acting within the scope of his (her) employment and excluding criminal litigation and as such liability coverage is within the authority of the school board to provide under State law. Except that, in no case, will individual board members be considered personally liable for indemnifying **SUPERINTENDENT** against such demands, claims, suits, actions and legal proceedings.

B. If in the good faith opinion of **SUPERINTENDENT**, conflict exists as regards the defense to such claim between the legal position of **SUPERINTENDENT** and the legal position of **DISTRICT**, the **SUPERINTENDENT** may engage counsel in which event **DISTRICT** shall indemnify the **SUPERINTENDENT**

for the costs of legal defense as permitted by State law.

C. DISTRICT shall not however, be required to pay any costs of any legal proceedings in the event **DISTRICT** and **SUPERINTENDENT** have adverse interests in such litigation.

9. MEDICAL EXAMINATION AND PERSONAL PROTECTION. In light of the unique nature of the professional duties of Superintendent of Schools, **DISTRICT** shall, at its expense, provide to **SUPERINTENDENT**:

A. A complete medical examination of **SUPERINTENDENT** not less than once every two years and no more often than once each year. Any report of the medical examination shall be given directly and exclusively by the examining physician to **SUPERINTENDENT**. The District shall be advised in writing by the physician of the continued physical fitness of the Superintendent to perform his (her) duties and such report shall be confidential.

B. In the event the life or safety of **SUPERINTENDENT** or his (her) family is threatened or otherwise appears in danger because of the performance of **SUPERINTENDENT'S** official duties,**DISTRICT** shall pay reasonable costs incident to the protection of the **SUPERINTENDENT** and his (her) family. The superintendent can request district to pay all or part of the charges. Protection, if required, will be sought first from the regular police authorities.

10. GOALS AND OBJECTIVES.
On or prior to the execution of this contract, the parties shall meet to establish **DISTRICT** goals and objectives for the ensuing school year. Said goals and objectives shall be reduced to writing and be among the criteria by which **SUPERINTENDENT** is evaluated as hereafter provided. On or prior to _____ of each succeeding school year, the parties will meet to establish **DISTRICT** goals and objectives for the next succeeding school year, in the same manner and with the same effect as heretofore described.

11. EVALUATION.

The Board shall evaluate and assess in writing the performance of **SUPERINTENDENT** at least once a year during the term of this contract. This evaluation and assessment shall be reasonably related to the position description of **SUPERINTENDENT** and the goals and objectives of the **DISTRICT** for the year in question.

SUPERINTENDENT shall submit to the Board a recommended format for this written evaluation and assessment of his (her) performance within ninety (90) days of the effective date of this contract. The Board shall meet and discuss the evaluation format with the **SUPERINTENDENT**, attempting in good faith to agree on the development and adoption of a mutually agreeable evaluation format. In any event, the Board shall adopt an evaluation format within 150 days of the effective date of this contract and shall evaluate the **SUPERINTENDENT** pursuant thereto within _____ (depends on notification date arrived at in Clause 13 below) prior to the expiration of the first year of the term of this contract.

At least once each fiscal year, **DISTRICT** and **SUPERINTENDENT** shall meet in closed executive session (unless specifically prohibited by state law) for the purpose of mutual evaluation of the performance of **DISTRICT** and **SUPERINTENDENT**. In the event that the Board determines that the performance of the Superintendent is unsatisfactory in any respect, it shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the **SUPERINTENDENT**. The **SUPERINTENDENT** shall have the right to make a written reaction or response to the evaluation. This response shall become a permanent attachment to the **SUPERINTENDENT'S** personnel file. Within thirty days of the delivery of the written evaluation to the **SUPERINTENDENT**, the Board shall meet with the **SUPERINTENDENT** to discuss the evaluation.

12. RENEWAL OF EMPLOYMENT CONTRACT.

If **DISTRICT** does not notify **SUPERINTENDENT** in writing before _____ that this Employment Contract will not renewed, it shall be deemed that **DISTRICT** has renewed this Employment Contract for

one (1) year extending from the termination date set forth in paragraph 1, above. **SUPERINTENDENT** shall, by certified mail to each member, remind the Board of the existence of this automatic renewal clause. Such notice shall be sent two months prior to the Board meeting where renewal or nonrenewal is to be considered. Failure to mail required notice shall invalidate the automatic renewal clause.

13. TERMINATION OF EMPLOYMENT CONTRACT.

This employment contract may be terminated by:

A. Mutual agreement of the parties.

B. Retirement of **SUPERINTENDENT**.

C. Disability of **SUPERINTENDENT**.

In the event of disability by illness or incapacity, after **SUPERINTENDENT'S** sick leave has been exhausted, the compensation shall be reinstated after **SUPERINTENDENT** has returned to employment and undertaken the full discharge of his (her) duties. **DISTRICT** may terminate this contract by written notice to **SUPERINTENDENT** at any time after **SUPERINTENDENT** has exhausted any accumulated sick leave and such other leave as may be available and has been absent from his (her) employment for whatever cause for an additional continuous period of _____. All obligations of **DISTRICT** shall cease upon such termination.

If a question exists concerning the capacity of **SUPERINTENDENT** to return to his (her) duties, **DISTRICT** may require **SUPERINTENDENT** to submit to a medical examination, to be performed by a doctor licensed to practice medicine. **DISTRICT** and **SUPERINTENDENT** shall mutually agree upon the physician who shall conduct the examination. The examination shall be done at the expense of the **DISTRICT**. The physician shall limit his (her) report to the issue of whether **SUPERINTENDENT** has a continuing disability which prohibits him (her) from performing his (her) duties.

D. Discharge for cause.

Discharge for cause shall constitute conduct which is seriously prejudicial to **DISTRICT**, including but not limited to, neglect of duty, or breach of contract. Notice of discharge for cause shall be given in writing and **SUPERINTENDENT** shall be entitled to appear before the Board to discuss such

causes. If **SUPERINTENDENT** chooses to be accompanied by legal counsel at such meeting, he (she) shall bear any costs therein involved. Such meeting shall be conducted in closed, executive session unless specifically prohibited by State law. **SUPERINTENDENT** shall be provided a written decision describing the results of the meeting.

In the event that the Board offers to terminate the contract by paying the amount specified in Clause 13 (E) below, the requirement of the hearing before the Board shall be waived by the **SUPERINTENDENT**.

E. Unilateral Termination by Board of Education.

The Board may, at its option, and by a minimum of 90 days notice to Superintendent, unilaterally terminate this contract. In the event of such termination the **DISTRICT** shall pay to **SUPERINTENDENT**, as severance pay, all of the aggregate salary he (she) would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract or _____ Dollars.

F. Termination with Superintendent's Concurrence.

DISTRICT may propose to terminate this employment contract upon 90 days written notice to **SUPERINTENDENT**. If the **SUPERINTENDENT** concurs in writing with this decision, **DISTRICT** shall pay to the **SUPERINTENDENT**, as serverance pay, all aggregate salary he (she) would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract or _____ Dollars. In the event the **SUPERINTENDENT** accepts the settlement specified above, the requirement for a hearing of the reasons for termination in closed executive session before the Board, as provided for in Clause 13 (D) above shall be waived. (The words "not to exceed one full year's compensation" may be added where permitted by state law, at discretion of school board.)

G. Death of **SUPERINTENDENT**.

14. SAVINGS CLAUSE.
If, during the term of this contract it is found that a specific clause of the contract is illegal in federal or state law, the remainder of the contract not affected by such a ruling, shall remain in force.

IN WITNESS WHEREOF, DISTRICT has caused this Employment Contract to be approved in his (her) behalf by a duly authorized officer and **SUPERINTENDENT** has approved this Employment Contract effective on the day and year specified in paragraph 1, above.

SUPERINTENDENT

_____

GOVERNING BOARD OF THE _____ SCHOOL DISTRICT

of _____

by: _____
President (or other officer, as appropriate), Governing Board

Witness

_____

Approval of form and legality by **DISTRICT'S** legal counsel.

This Employment Contract was approved by vote of the School Board at a public meeting duly held on _____ and has been made a part of the minutes for that meeting.

Anderson Independent-Mail
Wednesday, January 12, 1983

ROYSTER RELIEVED OF DUTY

By Kathy Scruggs
Staff Writer

Anderson School District 5 Board of Trustees Tuesday night voted 5-2 to relieve Superintendent William Royster of all "responsibilities, duties and authority as superintendent of School District 5."

By the same margin, the board also appointed H. Wallace Reid, currently McDuffie High School principal, interim superintendent of education of District 5.

The action, to be effective immediately, was taken while the board met for three hours behind closed doors.

The remainder of Royster's $50,697 annual salary and fringe benefits, except for travel expenses, will be paid in monthly installments through his contract termination date of June 30, 1983, according to the board.

Board members declined comment Tuesday night on the reasons behind the decision to relieve Royster.

The past District 5 board voted in September not to renew Royster's contract beyond its June expiration date. And in an October executive session, the board voted to evaluate Royster and reconsider his contract in January as stipulated in the contract.

Royster, who is scheduled for back surgery in Atlanta Friday, was absent from the meeting because he said he was under strict doctors' orders to remain in bed.

He said by telephone Tuesday night he had "turned the matter over to his attorney."

Reid, who is to assume "all duties relinquished by Royster," said he will accept the position as interim superintendent of District 5.

Greenville News
Wednesday, January 12, 1983

District 5 dismisses superintendent Royster

ANDERSON — The Anderson School District 5 board of trustees voted 5-2 late Tuesday night to relieve Superintendent William Royster of his duties and to pay off the remaining five months of his contract.

The trustees appointed McDuffie High School Principal Wallace Reid to serve as acting superintendent, effective immediately.

The action came after a 2½-hour closed-door session after the board's regular meeting.

Royster, who recently was selected as president-elect of the National Association of School Administrators, has been superintendent of Anderson city schools since 1967.

Royster did not attend the meeting and said late Tuesday night he will undergo surgery in Atlanta this week. He said he has turned the matter over to his attorney.

The State
Thursday, January 13, 1983

Anderson School Board Fires Superintendent

From Staff and Wire Reports

ANDERSON

School Superintendent William B. Royster was fired Tuesday night by the Anderson District Five school board after a three-hour, closed-door session.

Board members declined to comment on the action, which was effective immediately. The board agreed to pay the remainder of Royster's $50,000 salary in installments through the end of the fiscal year.

The board selected H. Wallace Reid, currently principal of McDuffie High School, to serve as interim superintendent.

Royster, who is scheduled for back surgery this weekend, did not attend the meeting. He told the *Anderson Independent* that he has turned the matter over to his attorney.

In September, the district board voted not to renew Royster's contract beyond its June 30 expiration date. However, in October the board agreed to evaluate Royster in January before making a final decision.

Royster was recently chosen as president-elect of the American Association of School Administrators and is scheduled to become president in March of 1984. Royster was a candidate for State Superintendent of Education in 1978 but was defeated in the Democratic Party primary by Charlie Williams, who won the post and was re-elected last year.

Anderson Independent-Mail
Sunday, January 16, 1983

District 5 Trustees Told To Stay Mum

From Staff Reports

Hinting at the possibility of being taken to court, District 5 school board members are saying little — at least to the public and press-on the dismissal of Superintendent William Royster.

In a carefully worded statement released Saturday, Board Chairperson Ann Huitt said board attorney Jack McIntosh has advised them not to comment.

"The School District 5 Board of Trustees," the statement said, "issues the following statement regarding the release of Dr. William B. Royster from all duties and responsibilities as superintendent on Tuesday, Jan. 11.

"In the best interest of the school district, the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation."

The statement went no further.

During the school board meeting Tuesday, the board emerged from behind closed doors to vote 5-2 to give long-time superintendent Royster his release. The board also named as interim superintendent, former McDuffie High School principal Wallace Reid.

Since then board members have declined to explain their reasons for the dismissal. Saturday's statement is the first time comments have gone beyond "No comment".

The remainder of Royster's $50,697 annual salary and fringe benefits will be paid in monthly installments until the contract's termination date of June 30.

The previous District 5 board voted not to extend Royster's contract past the June date. In October, the board, in another closed session, voted to evaluate Royster and reconsider his contract.

In a previous interview, Royster said he turned the matter over to attorneys. He is recuperating from back surgery in Georgia Baptist Medical Center in Atlanta.

Supreme Court, U.S.
FILED
MAR 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 85-1396

In The

Supreme Court of the United States

October Term, 1985

WILLIAM B. ROYSTER,

Petitioner,

v.

BOARD OF TRUSTEE OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5, TONY TURNER, EDWARD W. MORGAN, W. FRANK KELLAM, AND A. FRED STRINGER, JR., AS MEMBERS OF BOARD OF TRUSTEES OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5 AND AS INDIVIDUALS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRUCE A. BYRHOLDT
CHAPMAN, KING & BYRHOLDT
Attorney for Respondents Board of Trustees for Anderson County School District No. 5 and Trustees.

Post Office Box 2584
Anderson, South Carolina 29622
(803) 225-1411

CARY C. DOYLE
DOYLE & O'ROURKE
Attorney for Respondents Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals.

Post Office Box 225
Anderson, South Carolina 29622
(803) 224-7111

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

17P

TABLE OF CONTENTS

Pages

Table of Contents i

Table of Authorities ii

Statement of the Case

Procedural History 1

Statement of Facts 3

Reasons for Denying the Writ:

The Decision of the Fourth Circuit Court of Appeals does not negate the compensation principle of *Carey v. Piphus;* nor does it disregard the holding of *Board of Regents v. Roth* in determining constitutionally protected property interests. 6

The decision of the Court of Appeals does not conflict with the decision of the Sixth Circuit in *Stachura v. Truszkowski.* 9

The decision of the Fourth Circuit does not negate important protections conferred upon public employees. 12

The Court of Appeals' decision does not conflict nor offend the full compensation principle enunciated in *Carey v. Piphus, Perry v. Sindermann,* and *Logan v. Zimmerman Brush Co.* 13

Conclusion 14

TABLE OF AUTHORITIES

Pages

CASES:

Board of Regents v. Roth, 408 U.S. 564 (1972) 6, 8, 10

Cannon v. Beckville Independent School District, 709 F.2d 9 (5th Cir. 1983) 11

Carey v. Piphus, 435 U.S. 247 (1978) 6, 13

Cleveland Board of Education v. Loudermill, — U.S. —, 105 S.Ct. 1487 (1985) 8

Kilcoyne v. Morgan, 664 F.2d 940 (4th Cir. 1981) 7, 8

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 13

Perry v. Sindermann, 408 U.S. 593 (1972) 13

Robinson v. Houston-Galveston Area Council, 566 F.Supp. 370 (S.D. Tex. 1983) 9, 10, 11

Sigmon v. Poe, 564 F.2d 1093 (4th Cir. 1977) 7

Stachura v. Truszkowski, 763 F.2d 211 (6th Cir.) *cert. granted sub nom., Memphis Community Schools v. Stachura*, 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (no. 85-410) 9, 11

Tracey v. Sconnix Broadcasting of South Carolina, Inc., 284 S.C. 379, 325 S.E.2d 542 (SC 1985) 7

STATUTORY PROVISION:

42 U.S.C. § 1983 ..... 1, 2, 9, 11, 12

No. 85-1396

In The

Supreme Court of the United States

October Term, 1985

WILLIAM B. ROYSTER,

Petitioner,

v.

BOARD OF TRUSTEE OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5, TONY TURNER, EDWARD W. MORGAN, W. FRANK KELLAM, AND A. FRED STRINGER, JR., AS MEMBERS OF BOARD OF TRUSTEES OF ANDERSON COUNTY SCHOOL DISTRICT NO. 5 AND AS INDIVIDUALS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STATEMENT OF THE CASE

1. Procedural History

This is an action for damages based upon 42 *U.S.C.* § 1983, which arose from the mid-year termination of the Petitioner William B. Royster as superintendent of Anderson County School District Number Five. In his original and amended Complaints Royster also sought damages for defamation, breach of contract, outrage, invasion of privacy and deprivation of a liberty interest under § 1983. Respondents are the Board of Trustees for An-

derson County School District Number Five and then Trustees Tony Turner, Edward W. Morgan, W. Frank Kellam and A. Fred Stringer in their official and individual capacities. This action was filed in July 1983. Following motions for summary judgment being filed by both sides, Royster's claims for defamation, outrage, and deprivation of a liberty interest were either dismissed or withdrawn.

The case was tried over a three day period beginning April 3, 1983. During the trial the Board *stipulated* that it had breached Royster's contract and agreed for the Court to set damages based upon 26 days of unpaid annual leave. The Court directed a verdict against the Board of Trustees on the issue of liability concerning the deprivation of a property interest predicated on § 1983. The Court also granted Morgan and Turner a directed verdict on the invasion of privacy claim which had been asserted against them. On April 5, 1984, the jury returned a verdict awarding Royster $75,000.00 actual damages against the Board, Turner, Morgan, Kellam and Stringer and also assessing $750.00 punitive damages against Turner, Morgan, Kellam and Stringer. The jury did not assess damages against Trustee Joe O. Bolt. On April 23, 1984, Judgment was entered on the jury verdict. A motion for Judgment N.O.V. or a New Trial was filed on behalf of the Board, Turner, Morgan, Kellam and Stringer which was denied.

On July 23, 1984 notice of appeal was filed with the Fourth Circuit Court of Appeals. The Fourth Circuit reversed the District Court holding that Royster did not have a constitutionally protected property interest in continuing to physically hold his job position in defiance of

the Board's desire to relieve him of his duties. (Appendix A to Petition for Cert. at Page A-13). The Fourth Circuit further held that any constitutionally protected property interest enjoyed by Royster was satisfied by the payment of his compensation under his contract. (Appendix A to Petition for Cert. at Page A-14). Royster subsequently filed a Petition for Re-Hearing which the Fourth Circuit denied as being without merit. (Appendix A to the Petition for Cert. at Page A-16).

Royster filed his Petition for Certiorari to the United States Supreme Court on February 19, 1986.

2. Statement of Facts

William B. Royster was the superintendent of Anderson County School District Number Five, Anderson County, South Carolina from January 1967 until January 11, 1983. (Tr. pp. 1-26, lines 9-10). The Board of Trustees of Anderson County School District Number Five has the management and control of the school district pursuant to § 59-19-10 of the Laws of South Carolina (1976). Turner and Morgan were members of the Board during late 1982 and early 1983. Kellam and Stringer became Board members in January, 1983. On September 23, 1982, Royster was denied a one year extension to his contract. On January 5, 1983, the Board discussed the possibility of Royster resigning, taking medical leave or being terminated. On January 11, 1983 after declining to take medical leave or resign, the Board passed a motion relieving Royster of his duties as superintendent effective immediately with full pay and benefits through June 30, 1983, the effective date of his contract. Between January 11, 1983 and June 30, 1983, Royster was paid the compensation due him under

the contract, in the form of a monthly check, which he accepted and negotiated.

The principal issue before the district court was whether Royster possessed a constitutionally protected property interest in continued employment through June 30, 1983 and whether he had been deprived of it without due process. Royster's case was premised upon the allegation he was fired for cause, without being given reasons and without being given a due process hearing in violation of the Termination Clause of his contract.

The Board and Trustees contended, without any contradictory evidence being offered, that Royster was not fired for cause, no reasons were disclosed, he never requested reasons nor did he request a name clearing hearing. Royster's contract was bought up and he was relieved of his duties with full pay and benefits through June 30, 1984. It was also asserted that even if Royster was entitled to some type of due process, he waived that right by failing to ask for a hearing and by accepting the remuneration tendered by the District.

The district court, directed a verdict against the Board on the issue of liability on the property interest claim, finding that Royster was dismissed in contravention of the parties contract (Fourth Circuit Joint Appendix at page 360, lines 14-15). The district court further found, as a matter of law, that Royster was not afforded minimum due process, he did not waive his procedural rights because those rights were mandatory under the contract, the contractual procedure for discharge for cause was not followed and the opportunity to be heard was not

established because of Royster's known medical condition, the Board's late hour decision and the immediate replacement of an interim superintendent. Acceptance of benefits, if not the total benefits due, also does not constitute a waiver of one's procedural rights. The district court failed to direct a verdict in favor of the individual trustees on the basis of qualified immunity when the only evidence presented was that they were following the advice of counsel and performing the discretionary function of administering to the needs of the school district in relieving Royster of his duties.

The Appeal to the Fourth Circuit focused upon the issues of whether Royster had a constitutionally protected property interest in continuing to perform his job function in view of the fact that he had been relieved of his duties and paid his benefits; whether the District Court erred in failing to direct a verdict in favor of the trustees in their individual capacities on the basis of qualified immunity; in failing to charge the defense of waiver concerning Royster's acceptance of benefits; in the errors contained in the charge to the jury and the District Court's error in admitting into evidence newspaper articles editorializing the action of the Board as it related to Royster.

The Fourth Circuit reversed the District Court by holding Royster did not have a constitutionally protected property interest in continuing to occupy the position of superintendent once he had been relieved of duties and paid his benefits. (Appendix A to Petition for Cert. at pages 13-14).

———o———

REASONS FOR DENYING THE WRIT

The Decision Of The Fourth Circuit Court Of Appeals Does Not Negate The Compensation Principle Of Carey v. Piphus; Nor Does It Disregard The Holding Of Board Of Regents v. Roth In Determining Constitutionally Protected Property Interests

The decision of the Fourth Circuit does not conflict with the "full compensation principle" enunciated by this Court in *Carey v. Piphus*, 435 U.S. 247 (1978). The decision does not discuss compensation nor damages. Rather, the Court of Appeals focused in on the critical issue of whether Royster had a constitutionally protected property interest under the criteria set forth in *Board of Regents v. Roth*, 408 U.S. 564 (1972). In *Roth* this Court held that in order to establish such a property interest in a benefit [job]:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . .
>
> Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law. . .
>
> In deciding whether a person possesses a property interest a court must carefully sift through abstract needs and unilateral expectations until it locates a legitimate claim of entitlement. 408 U.S. at 577.

The Court of Appeals concluded that Royster did not have a constitutionally protected property interest in con-

tinuing to actively engage in and execute the duties of his office after he had been relieved of his duties, but with full salary and benefits through the end of the contractual period. (Appendix A of the Petition for Cert. at page A-13). The Court of Appeals correctly reasoned that not every breach of public employment contract amounts to a constitutional deprivation. *Kilcoyne v. Morgan,* 664 F.2d 940, 942 (4th Cir. 1981); *Sigmon v. Poe,* 564 F.2d 1093, 1096 (4th Cir. 1977). (Appendix A of the Petition for Cert. at page A-13). The Court of Appeals correctly identified the severe hardship which would be placed on public employers who could not relieve an employee with whom they were dissatisfied, but without specific cause to discharge, even if they were willing to compensate him fully under the terms of the contract. (Appendix A of the Petition for Cert. at page A-13).

Royster now seeks to assert the position, raised for the first time in his Petition for Rehearing, that state law provides Royster with the constitutionally protected property interest in continuing to occupy his job position. He relies on the case of *Tracey v. Sconnix Broadcasting of South Carolina, Inc.,* 284 S.C. 379, 325 S.E.2d 542 (S.C. 1985) for the proposition that under South Carolina law a contract of employment gives the employee a constitutionally protected property interest in his job title and duties. Counsel for Royster, when citing *Tracey,* have continuously failed to quote one important clause from the Court's holding that violation of the term of the contract will support an action by the employee for damages *for breach of contract.* (emphasis added). Each time this case was cited by Royster in his Petition the reference to breach of contract has been intentionally omitted.

Respondents have always admitted they breached Royster's contract, this was stipulated to at the trial; but likewise they have always contended the breach of an employment contract does not become a constitutional violation merely because a governmental agency is a party to the contract. *Kilcoyne v. Morgan, supra.* However, under the facts of this case he did not have a constitutionally protected property interest in continuing to perform his job duties against the direct wishes of the Board. Any expectation of being allowed to continue to occupy the position of superintendent against the wishes of the Board was a unilateral expectation on his behalf, therefore, not subject to constitutional protections. See: *Board of Regents v. Roth,* 408 U.S. at 577.

In *Cleveland Board of Education v. Loudermill,* — U.S. —, 105 S.Ct. 1487, 1495 (1985), Justice White delivering the opinion of the Court wrote: "Finally, in those situations where the employer perceives a significant hazard in keeping the employee on the job, it can avoid the problem by suspending with pay." If the problem (constitutional deprivation) can be avoided by suspending with pay, surely it can be avoided by relieving the employee of his duties with full salary and benefits for the term of the contract.

Respondents assert the Court of Appeals correctly held that Royster did not have a constitutionally protected property interest under the unusual facts presented in this case. Any expectation Royster had of continuing to perform as superintendent of School District Number Five after being relieved of his duties by the Board and promised his full salary and benefits under his contract was a unilateral expectation on Royster's part, therefore, not a

property interest which is afforded protection under the Constitution of the United States.

The Decision Of The Court Of Appeals Does Not Conflict With The Decision Of The Sixth Circuit In Stachura v. Truszkowski

Royster contends the decision of the Fourth Circuit in this case conflicts with the decision of the Sixth Circuit in *Stachura v. Truszkowski,* 763 F.2d 211 (6th Cir. 1985), cert. granted sub nom., *Memphis Community Schools v. Stachura,* 54 U.S.L.W. 3278 (U.S. Oct. 22, 1985) (No. 85-410) and also conflicts with *Robinson v. Houston-Galveston Area Council,* 566 F.Supp. 370 (S.D. Tex. 1983). Respondents assert these cases are distinguishable on the facts. Any alleged conflict is the result of a misapprehension of the facts of these cases and the attempted illogical extension of liability under § 1983.

In *Stachura,* a public schoolteacher was suspended with pay and reprimanded following allegations raised against him in a public meeting of the School Board. The allegations concerned his teaching human reproduction and included allegations that he was a "sex maniac." Public statements concerning the employee were apparently also made by members of the school board and the superintendent. Extensive publicity was reported in the local media including public allegations and charges made against Mr. Starchura. The meeting of the school board was open to the public and allegations against the teacher were aired in public.

In *Robinson,* a district court case, the metropolitan health commissioners had their positions terminated with-

out a showing of "good cause only" in violation of federal regulations. The district court further held that a benefit need not be of an economic value in order to qualify as a property interest. *Robinson,* 566 F.Supp. at 377. However, in order to be a constitutionally protected property interest, the entitlement must be legitimate not a mere abstract or unilateral expectation. *Roth,* 408 U.S. at 577.

The facts in this case prove that Royster has failed in meeting the threshold requirement of establishing a constitutionally protected property interest. In order for Royster to have such an interest, in continuing to perform his duties against the wishes of the Board and after he has been promised his full salary and benefits under his contract, the state of the law must have evolved to a position that employers no longer have any control over their employees or their business decisions.

Here, all the Board and Trustees wanted to do was perform their sworn public duty to effectively manage the school district. The Respondents brought no charges against Royster; they made no public disclosure of the reasons for their decision; Royster was relieved of his duties with full salary and benefits. Rather, the decision to relieve Royster was made in closed/executive session and no comments were made by any of the Respondents concerning any reasons for the decision. Moreover, *Royster never asks for the reasons he was being relieved nor did he ever request a hearing to present his view.*

Royster, on appeal to the Fourth Circuit and now in his Petition for Certiorari, alleges his property interest is grounded on the basis that he was denied the opportunity to perform the normal activities of his position from Jan-

uary 11, 1983 until June 30, 1983. After a careful review of the entire record, there is not one shred of evidence that Royster considered the performance of his job to be the property interest he was entitled to under his contract, all of the testimony at trial dealt with salary, leave and retirement benefits.

First, the expectation of being allowed to continue performance of one's job after being relieved of your duties and being promised all the salary and benefits due under a contract can only be considered a unilateral expectation and not the type of property interest afforded constitutional protection. If this is not a unilateral expectation a governmental agency which is dissatisfied with the performance of a contractual employee could never satisfy their obligation to make payments of full compensation due under the contract and excuse the employee from further performance of his job functions without facing a § 1983 claim for damages.

The purported conflict between this case and the decisions in *Stachura* and *Robinson* are imaginary. Here, all Royster can establish is a unilateral expectation of being allowed to perform his job activities after being relieved. There was no public disclosure by the Respondents in this case. Royster did not request any reasons for the Board's decision nor did he request an opportunity to explain his views. Royster was not discharged for cause. Royster was not stigmatized by the Board's discretionary decision to relieve him with full salary and benefits because no charges were brought against him.

In *Cannon v. Beckville Independent School District*, 709 F.2d 9 (5th Cir. 1983), the Court of Appeals in ad-

dressing the issue of whether Cannon was entitled to damages because of the denial of a hearing after his mid-year termination as superintendent held:

> The Board did nothing which could be said to have reflected against Cannon except by its decision not to renew. The Board paid Cannon the full amount due him under the existing contract. Despite Cannon's arguments, here, he did not request a hearing by the Board on the cause for his being relieved. The only correspondence from his attorney requested negotiations to settle Cannon's claim under the alleged extended contract. Id. at 11.

Again, the Board levied no charges against Royster, he did not request reasons nor a hearing and the only contact between Royster, through his attorney, and the Board was a letter of July 14, 1983 attempting to settle the dispute concerning unused vacation and sick pay. (Joint Appendix to Fourth Circuit at 422).

The decision of the Fourth Circuit was predicated on the unusual facts of this case and the genuine concern that public employers not be stripped of all managerial power. The Petition filed by Royster does not provide proper grounds for the issuance of a writ of certiorari.

The Decision Of The Fourth Circuit Does Not Negate Important Protections Conferred Upon Public Employees.

The decision of the Court of Appeals in this case does not offend the constitutional principles of due process nor detract from protection afforded the public employee under the Constitution of the United States. This case because of its unusual facts serves as a line of demarcation in the area of § 1983 claims. When a salaried public em-

ployee is excused by his employer from performing the remainder of his duties under his contract of employment, paid all of his benefits, and no charges or allegations brought against him it cannot be said that he has been deprived of a protected property interest without due process of law. To hold otherwise would undermine the authority of governmental agencies to control their employees, manage effectively and efficiently and place the employee in charge of the employer.

The Court Of Appeals' Decision Does Not Conflict Nor Offend The Full Compensation Principle Enunciated In Carey v. Piphus, Perry v. Sindermann and Logan v. Zimmerman Brush Co.

Royster again seeks to mislead the Court in arguing that the Fourth Circuit's decision in this case conflicts with the concept of full compensation for constitutional torts. See: *Carey v. Piphus,* 435 U.S. 247 (1978); *Perry v. Sindermann,* 408 U.S. 593 (1972) and *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The Court of Appeals' decision does not even address the issue of damages or compensation because it was held that Royster did not have a constitutionally protected property interest in continuing to perform his job duties against the wishes of the Board. (Appendix A to Petition for Cert. at pages A-13 & 14). Respondents agree that the principle of full compensation for actual damages would apply if Royster had established liability for a constitutional tort. This issue was not argued in the lower courts and there is no dispute concerning the principle of full compensation. This argument also fails to state sufficient grounds upon which to issue a writ of certiorari.

CONCLUSION

For the reasons presented hereinabove, Respondents respectfully request that a writ of certiorari should not be granted to review the decision of the Fourth Circuit Court of Appeals.

Respectfully submitted,

BRUCE A. BYRHOLDT
CHAPMAN, KING & BYRHOLDT
Attorney for Respondents Board of Trustees for Anderson County School District No. 5 and Trustees.

Post Office Box 2584
Anderson, South Carolina 29622
(803) 225-1411

CARY C. DOYLE
DOYLE & O'ROURKE
Attorney for Respondents Tony Turner, Edward W. Morgan, W. Frank Kellam, A. Fred Stringer, Jr., as individuals.

Post Office Box 2125
Anderson, South Carolina 29622
(803) 224-7111

March 17, 1986

Supreme Court, U.S.
FILED
APR 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1396

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Kenneth L. Childs
David T. Duff

Post Office Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Counsel for Petitioner, William B. Royster

April 9, 1986

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Statement of the Case 1

I. Respondents' Brief Ignores State Law 2

II. Respondents' Reliance Upon *Cleveland Board of Education v. Loudermill* is Misplaced 2

III. Respondents' Contention That Royster Somehow Waived or Failed to Pursue His Right to Recover is Clearly Without Merit .....

IV. Respondents' Argument That Royster was not Injured is Precluded by the Jury's Damage Verdict 4

Conclusion 4

Appendix

TABLE OF AUTHORITIES

Page

Cases

Board of Regents v. Roth, 408 U.S. 564 (1972) 2

Cannon v. Beckville Independent School District, 709 F.2d 9 (5th Cir. 1983) 3

Carey v. Piphus, 435 U.S. 247 (1978) 2

Cleveland Board of Education v. Loudermill, ___ U.S. ___, 105 S.Ct. 1487 (1985) 2,3

Tracey v. Sconnix Broadcasting of South Carolina, Inc. 284 S.C. 379, 325 S.E.2d 542 (1985) 2

No. 85-1396

IN THE

Supreme Court of the United States

October Term, 1985

William B. Royster,

Petitioner,

v.

Board of Trustees of Anderson County School District No. 5, Tony Turner, Edward W. Morgan, W. Frank Kellam, and A. Fred Stringer, Jr., as members of the Board of Trustees of Anderson County School District No. 5 and as individuals,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Respondents terminated Petitioner Royster's job as school superintendent in violation of his employment contract. The district court and the jury concluded that Royster was entitled to substantial damages as a result of the wrongful deprivation of his property interest in continued employment. The court of appeals reversed. It asserted that Royster had not been denied any property right because he had received the remainder of the salary due him under contract. By ignoring the full property interest to which Royster was entitled under his contract, the court of appeals attempted to eliminate the

substantive basis for Royster's damage award and thereby to leave Royster uncompensated for injuries he had suffered as a result of his wrongful termination.

I. RESPONDENTS' BRIEF IGNORES STATE LAW

Respondents contend repeatedly that Royster had only a "unilateral expectation" of remaining as the school superintendent. Under *Board of Regents v. Roth*, 408 U.S. 564 (1972), state law determines whether Royster had a property right. Under state law, *Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 325 S.E.2d 542 (1985), Royster's fixed term contract gave him a legal right to his job title and to the duties for which he had contracted.[1] *Tracey* does not require that the employment contract contain a discharge-only-for-cause provision. That Royster's contract did contain such a protection makes his case even stronger.[2]

Respondents argue that the state should be free to breach a contract giving an employee a right to a certain job and to certain duties without fully compensating the employee for his damages. If the state wishes to be able to relieve employees with pay, it should not enter contracts in which it agrees to do otherwise.

II. RESPONDENTS' RELIANCE UPON *CLEVELAND BOARD OF EDUCATION v. LOUDERMILL* IS MISPLACED

In *Cleveland Board of Education v. Loudermill*, ___ U.S. ___, 105 S.Ct. 1487, 1495 (1985), it was suggested that where an employer perceives "a significant hazard in keeping the employee on the job, it can avoid the problem [of due process

---

[1]In arguing that *Tracey* should limit Royster's right of recovery to breach of contract damages, Respondents continue to miss the distinction between the underlying substantive interest and damages limitations under state contract remedies. *See Carey v. Piphus*, 435 U.S. 247, 258 (1978).

[2]Despite Respondents' assertion to the contrary, the record is clear that Respondents moved against Royster for cause-type reasons (see testimony of Board members, pages App. 1, 2 of Appendix hereto), but without compliance with the discharge-for-cause provision of the contract.

violation] by suspending with pay." Respondents seek support in that statement. Nevertheless, the Respondents repeatedly insist that there was no "cause" for Royster's discharge. Absent a cause for his discharge, there could not have been any significant hazard involved in keeping him on the job as his contract required.[3] Nothing in *Loudermill* suggests that the state is entitled to remov) an employee from his job in violation of his contract absent a significant hazard.

III. RESPONDENTS' CONTENTION THAT ROYSTER SOMEHOW WAIVED OR FAILED TO PURSUE HIS RIGHT TO RECOVER IS CLEARLY WITHOUT MERIT

Respondents appear to argue that Royster is not entitled to recover because he failed to properly invoke his right to procedural due process. Respondents contend that, after being relieved, Royster never asked for the reasons for the action against him and never requested a hearing to challenge those reasons. However, both under his contract and the requirements of due process, Royster was entitled to notice and an opportunity for a hearing *before* he was deprived of his property right. See contractual provisions, Petition for Writ of Certiorari, page B-7; *Loudermill*, 105 S.Ct. at 1493.

In attempting to bring the present case within the circumstances of *Cannon v. Beckville Independent School District*, 709 F.2d 9 (5th Cir. 1983), regarding the failure to invoke due process rights, Respondents refer to a January 14, 1983 letter to Respondents written by counsel for Royster which attempted to resolve the matters of unused vacation and sick pay. (Brief in Opposition, page 12, referring to Joint Appendix to Fourth Circuit at 422.) Respondents conveniently overlook the fact that the July 14, 1983 letter was written *after* the filing of the instant action alleging a taking of property without procedural due process. (See complaint, Joint Appendix to Fourth Circuit at 8.)

---

[3]Although the record makes clear that Respondents proceeded against Royster for cause-type reasons, the record is devoid of evidence indicating a possible emergency situation requiring Royster's immediate removal.

IV. RESPONDENTS' ARGUMENT THAT ROYSTER WAS NOT INJURED IS PRECLUDED BY THE JURY'S DAMAGE VERDICT

Respondents appear to argue that their action was not injurious to Royster. They contend that Royster was not discharged for cause and that there was no public disclosure of the reasons for the action. Respondents can hardly deny, however, that their official public statement regarding the action read: "...the board has been advised by its attorney to make no comment regarding Dr. Royster's release due to the sensitive nature of this matter and the possibility of litigation." (See Petition for Writ of Certiorari, page B-23.) At trial, Royster contended that this official statement severely damaged his reputation. He received a damage verdict from the jury.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, the Court should grant certiorari, and reverse the judgments below.

Respectfully submitted,

Kenneth L. Childs
David T. Duff

Post Office Box 11367
Columbia, South Carolina 29211

Counsel for Petitioner, William B. Royster

April 8, 1986

APPENDIX

district which were concerns, so it had no way of us evaluating how these concerns were being met and dealt with and accomplished. It didn't identify any way of reaching goals.

Q. You voted to relieve Dr. Royster. Why did you see the need to relieve him if his contract was going to run out on June the 30th of that year?

A. The schools were falling in. We've got schools 20 years old that have never had a coat of paint on them. There was favoritism shown between staff members and the regular classroom teachers. We had no good maintenance program, so we couldn't have had a preventive maintenance program whatsoever. My wife taught in the school district 13 years prior to my running for the school board, so it's not the January 5th that I woke up and made a decision. My decision was made over 13 years of living with a school teacher. She was not satisfied in the least, and when we got financially able she decided to voluntarily resign her position. About 80 percent of our friends and acquaintanances, I would say 80 percent, most of them, of friends and acquaintances were also teachers in the school district and we had a lot of contact with them. They felt that there was a lot of intimidation between the central office and the schools. People did not feel comfortable about approaching Dr. Royster about anything. They were scared to death of him.

Byrholdt. In October, of course, being the author of the motion that we would reconsider with the new board the superintendent's contract, I began between October and January doing my own personal type of evaluation, and I found several things that were of great concern to me, not only great concern but of importance enough to terminate Dr. Royster and relieve him of his duties immediately when the question was put in January. Yesterday Dr. Royster testified that it's the duty of a Board of Trustee member to make sure that the children are provided with a quality education. I, by no means, thought we were doing that. I based that decision partly on the fact that in previous conversation with now board chairman or chairwoman, should I say, Ann Huitt. Mrs. Huitt shared with me that one afternoon or one morning, one day, she witnessed a young man that could not sign his payroll check. He had to take out his driver's license, copy his name down off of his driver's license to endorse the check at the bank. Mrs. Huitt went over and talked with that young man. She asked him what high school did he go to or rather what school he graduated from. He was still in the 11th grade. And I thought to myself, if we are indeed providing the quality education that school board members are enforced to give, we certainly weren't doing that. I then asked myself the question, well, if an 11th grader can't read or write, it's